116-346

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 1277.

LORENZO SNOW, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE SUPREME COURT OF THE TERRITORY OF UTAH.

FILED MARCH 2, 1886.

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JUDD & DETWEILER, PRINTERS, WASHINGTON.

a *Transcript on Appeal.*

Supreme Court of Utah Territory. January Term, 1886.

UNITED STATES OF AMERICA, Respondent,
vs.
LORENZO SNOW, Appellant. } No. 741.

F. S. Richards and Bennett, Harkness & Kirkpatrick, attorneys for appellant; W. H. Dickson, U. S. dis't att'y.

Filed January 26th, 1886.

E. J. SPRAGUE, *Clerk.*

1 *Transcript.*

UNITED STATES OF AMERICA, }
Territory of Utah, } *ss:*

Supreme Court of Utah Territory. January Term, 1886.

UNITED STATES OF AMERICA, Respondent,
vs.
LORENZO SNOW, Appellant.

Indictment.

At a stated term of the district court of the first judicial district in and for the Territory of Utah, begun and holden at the
2 city of Ogden, within and for the district and Territory aforesaid, on the sixteenth day of November, A. D. 1885, and continued by adjournment to and including the second day of December, A. D. 1885.

UNITED STATES OF AMERICA *against* LORENZO SNOW.

The grand jurors of the United States of America, within and for the district aforesaid, in the Territory aforesaid, being duly empaneled and sworn, on their oaths do find and present that Lorenzo Snow, late of said district, in the Territory aforesaid, heretofore, to wit, on the first day of January, in the year of our Lord one thousand eight hundred and eighty-three, at the county of Box Elder, in the said district, Territory aforesaid, and within the jurisdiction of this court, and on divers others days and times thereafter, and continuously between said first day of January, A. D. 1883, and the thirty-first day of December, A. D. 1883, did then and there unlawfully live and cohabit with more than one woman, to wit, with Adeline Snow, Sarah Snow, Harriet Snow, Eleanor Snow, Mary H. Snow, Phœbe W. Snow, and Minnie Jensen Snow; and during all the period aforesaid, at the county aforesaid, he, the said Lorenzo Snow, did unlawfully claim, live, and cohabit with all of said women as his wives, against the form of the statute of the said United States in such case made and provided and against the peace and dignity of the same.

V. BIERBOWER,
Ass't U. S. District Att'y.
J. W. McNUTT,
Foreman of Grand Jury.

Indictment No. 741 filed in open court, properly endorsed a true bill, etc., and with the names of the witnesses, on the 5th day of December, 1885.

3 *Court Minute Entry of Arraignment.*

(Title of court and cause.)

In this action, the defendant, being in court, and upon the indictment herein being read to him, was, on motion of R. K. Williams, Esq., of counsel for said defendant, given until Monday morning next to plead thereto.

ORLANDO W. POWERS, *Judge.*

In open court Friday, December 11th, A. D. 1885.

Demurrer to Indictment.

(Title of court and cause.)

The defendant demurs to the indictment in the above-entitled prosecution for the following causes:

1. Because there is no such body known to the law in Utah Territory as a grand jury of the United States, nor are there any such persons known to such law as United States grand jurors.

2. Because it does not appear in said indictment that it was found by a grand jury of said district court, nor does it appear therein that it was found by a grand jury of the first judicial district of Utah Territory, nor does it appear therein that it was found by a legally constituted grand jury.

3. Because the grand jury as set out and described in said indictment had no jurisdiction of said offense, nor has this court any jurisdiction thereof as presented by said grand jury.

4. Because the facts stated in said indictment do not constitute a public offense or violation of any law in operation in said Territory.

5. Because more than one offense is stated in the same in-
4 dictment and count of the indictment in this: that said defendant is charged with cohabiting with more than one woman as his wives—"on the first day of January, in the year of our Lord one thousand eight hundred and eighty-three, at the county of Box Elder, in the said district, Territory aforesaid, and within the jurisdiction of this court, and on divers other days and times thereafter and continuously between said first day of January, A. D. 1883, and the thirty-first day of December, A. D. 1883, did then and there unlawfully live and cohabit with more than one woman;" whereas the living with and cohabiting with more than one woman as his wives were not one continuous offense, but a new and distinct offense for each and every day said defendant is charged with so unlawfully living with and cohabiting with more than one woman as his wives.

6. That said defendant is therein charged with unlawfully living with and cohabiting with as his wives on the first day of January, 1883, and each and every day thereafter continuously until the thirty-first day of December, 1883, divers women, to wit: with

Adeline Snow, Sarah Snow, Harriet Snow, Eleanor Snow, Mary H. Snow, Phœbe W. Snow, and Minnie Jensen Snow; whereas the unlawful living with each and every one of said women as charged in said indictment is a separate and distinct offense, and not one single offense.

7. Because it is not stated in said indictment which of said named women is said defendant's first and legal wife, nor who is his first and legal wife.

F. S. RICHARDS,
BENNETT, HARKNESS & KIRKPATRICK, AND
R. K. WILLIAMS,

Attorneys for Defendant.

Endorsed: No. 741. Filed December 15, 1885. A. C. Emerson, clerk. Service acknowledged December 15, 1885. V. Bierbower, ass't U. S. dis't att'y.

5 *Order Overruling Demurrer. Defendant's Plea.*

(Title of court and cause.)

This cause came regularly on to be heard upon the demurrer of the defendant to the indictment herein. Said demurrer was argued by counsel, R. K. Williams, for said defendant, and V. Bierbower, Esq., assistant United States attorney, for the Government, and submitted to the court for judgment and decision. And the court, now here, being fully advised in the premises, and due deliberation being thereupon had, it is ordered by the court that said demurrer be, and the same is hereby, overruled; to which order and ruling of the court the said defendandt, by his said counsel, duly excepts.

Said defendant, upon being asked to plead to said indictment, pleads not guilty thereto.

ORLANDO W. POWERS, *Judge.*

In open court Wednesday, December 16, 1885.

Plea of Former Conviction and Court Minutes of Trial.

(Title of court and cause.)

This cause came regularly on for trial, V. Bierbower, Esq., appearing for the United States, and Messrs. Bennett, Harkness & Kirkpatrick, F. S. Richards, C. C. Richards, and H. H. Rolapp for said defendant.

By leave of court first had and obtained the said defendant makes the following oral plea in bar to the further prosecution of this indictment:

And now comes the said defendant, and protesting he is not guilty of the premises charged, and by leave of court for a further
6 plea herein saith: That the United States ought not to further prosecute the said indictment against him, the said Lorenzo Snow, because that since his former plea herein he has been twice convicted of the same offense charged in this indictment, by the

judgments of this court, to wit, the district court of the first judicial district of the Territory of Utah, rendered at the city of Ogden, in the county of Weber, on the thirty-first day of December, 1885, and on the fifth day of January, 1886, respectively—that is, on the days and at the place and in the court aforesaid, he was found guilty of the same offense charged in this indictment by the verdicts of two juries, which verdicts are unreversed and in full force.

And for a further specification of this plea the said defendant saith that the grand jury of this court, for the November term thereof, of the year 1885, duly empaneled, charged, and sworn to enquire of offenses against the United States within the jurisdiction of this court, on the fifth day of December, 1885, presented and filed in this court, in due form, three indictments against this defendant, in words and figures following, to wit:

UNITED STATES OF AMERICA, }
Territory of Utah, } *ss*:

At a stated term of the district court of the first judicial district in and for the Territory of Utah, begun and holden at the city of Ogden, within and for the district and Territory aforesaid, on the sixteenth day of November, A. D. 1885, and continued by adjournment to and including the second day of December, A. D. 1885.

UNITED STATES OF AMERICA *against* LORENZO SNOW.

The grand jurors of the United States of America, within and for the district aforesaid, in the Territory aforesaid, being duly
7 empaneled and sworn, on their oaths do find and present that Lorenzo Snow, late of said district, in the Territory aforesaid, heretofore, to wit, on the first day of January, in the year of our Lord one thousand eight hundred and eighty-three, at the county of Box Elder, in the said district, Territory aforesaid, and within the jurisdiction of this court, and on divers others days and times thereafter, and continuously between said first day of January, A. D. 1883, and the thirty-first day of December, A. D. 1883, did then and there unlawfully live and cohabit with more than one woman, to wit, with Adeline Snow, Sarah Snow, Harriet Snow, Eleanor Snow, Mary H. Snow, Phœbe W. Snow, and Minnie Jensen Snow; and during all the period aforesaid, at the county aforesaid, he, the said Lorenzo Snow, did unlawfully claim, live, and cohabit with all of said women as his wives, against the form of the statute of the said United States in such case made and provided and against the peace and dignity of the same.

V. BIERBOWER,
Ass't U. S. Dis. Attorney.
J. W. McNUTT,
Foreman of Grand Jury.

Endorsed: No. 741. First district court, Territory of Utah. The United States of America against Lorenzo Snow. Indictment for unlawful cohabitation. A true bill. J. W. McNutt, foreman of grand jury.

Presented in open court by the foreman of the grand jury, and filed by me this fifth day of December, 1885.

A. C. EMERSON, *Clerk.*
V. BIERBOWER,
Ass't U. S. Attorney.

Witnesses examined before the grand jury: C. J. Corey, Lucius A. Snow, Minnie Jensen Snow, Nellie Hansen, Nellie Colebrook, D. H. Peery, Mary Houtz Snow, Eleanor Snow, Harriet A. Snow, Mrs. Lorenzo Snow, Jr., Amelia Hansen, Emma Josephsen, John F. Olsen, Maria Nichols, Frank H. Snow, Dr. J. B. Carrington.

8 UNITED STATES OF AMERICA, } *ss:*
Territory of Utah, }

At a stated term of the district court of the first judicial district in and for the Territory of Utah, begun and holden at the city of Odgen, within and for the district and Territory aforesaid, on the sixteenth day of November, A. D. 1885, and continued by adjournment to and including the second day of December, A. D. 1885.

UNITED STATES OF AMERICA *against* LORENZO SNOW.

The grand jurors of the United States of America, within and for the district aforesaid, in the Territory aforesaid, being duly empaneled and sworn, on their oaths do find and present that Lorenzo Snow, late of said district, in the Territory aforesaid, heretofore, to wit, on the first day of January, in [the] year of our Lord one thousand eight hundred and eighty-four, at the county of Box Elder, in the said district, Territory aforesaid, and within the jurisdiction of this court, and on divers other days and times thereafter and continuously between said first day of January, A. D. 1884, and the thirty-first day of December, A. D. 1884, did then and there unlawfully live and cohabit with more than one woman, to wit, with Adeline Snow, Sarah Snow, Harriet Snow, Eleanor Snow, Mary H. Snow, Phœbe W. Snow, and Minnie Jensen Snow; and during all the period aforesaid, at the county aforesaid, he, the said Lorenzo Snow, did unlawfully claim, live, and cohabit with all of said women as his wives, against the form of the statute of the said United States in such case made and provided and against the peace and dignity of the same.

V. BIERBOWER,
Ass't U. S. Dist. Attorney.
J. W. McNUTT,
Foreman of Grand Jury.

9 Endorsed: No. 743. First district court, Territory of Utah. The United States of America against Lorenzo Snow. Indictment for unlawful cohabitation. A true bill. J. W. McNutt, foreman of grand jury.

Presented in open court by the foreman of the grand jury and filed by me this fifth day of December, 1885.

A. C. EMERSON, *Clerk.*
V. BIERBOWER,
Asst. U. S. Attorney.

Witnesses examined before the grand jury: C. J. Corey, Lucius A. Snow, Minnie Jensen Snow, Nellie Hansen, Nellie Colebrook, D. H. Peery, Mary Houtz Snow, Eleanor Snow, Harriet A. Snow, Mrs. Lorenzo Snow, Jr., Amelia Hansen, Emma Josephson, John F. Olsen, Maria Nichols, Frank H. Snow, Dr. J. B. Carrington.

UNITED STATES OF AMERICA, *Territory of Utah*, } ss:

At a stated term of the district court of the first judicial district in and for the Territory of Utah, begun and holden at the city of Ogden, within and for the district and Territory aforesaid, on the sixteenth day of November, A. D. 1885, and continued by adjournment to and including the second day of December, A. D. 1885.

UNITED STATES OF AMERICA *against* LORENZO SNOW.

The grand jurors of the United States of America, within and for the district aforesaid, in the Territory aforesaid, being duly empaneled and sworn, on their oaths do find and present that Lorenzo Snow, late of said district, in the Territory aforesaid, heretofore, to wit, on the first day of January, in the year of our Lord one thousand eight hundred and eighty-five, at the county of Box Elder, in the said district, Territory aforesaid, and within the jurisdiction of this court, and on divers other days and times thereafter and continuously between said first day of January, A. D. 1885, and the first day of December, A. D. 1885, did then and there unlawfully live and cohabit with more than one woman; to wit, with Adeline Snow, Sarah Snow, Harriet Snow, Eleanor Snow, Mary H. Snow, Phœbe W. Snow, and Minnie Jensen Snow; and during all the period aforesaid, at the county aforesaid, he, the said Lorenzo Snow, did unlawfully claim, live, and cohabit with all of said women as his wives, against the form of the statute of the said United States in such case made and provided, and against the peace and dignity of the same.

V. BIERBOWER,
Asst. U. S. District Attorney.
J. W. McNUTT,
Foreman of Grand Jury.

Endorsed: No. 742. First district court, Territory of Utah. The United States of America against Lorenzo Snow. Indictment for unlawful cohabitation. A true bill. J. W. McNutt, foreman of grand jury.

Presented in open court by the foreman of the grand jury, and filed by me this fifth day of December, 1885.

A. C. EMERSON, *Clerk.*
V. BIERBOWER,
Asst. U. S. Attorney.

Witnesses examined before the grand jury: C. J. Corey, Lucius A.

Snow, Minnie Jensen Snow, Nellie Hansen, Nellie Colebrook, D. H. Peery, Mary Houtz Snow, Eleanor Snow, Harriet A. Snow, Mrs. Lorenzo Snow, Jr., Amelia Hansen, Emma Josephson, John F. Olsen, Maria Nichols, Frank H. Snow, Dr. J. B. Carrington.

That on the eleventh day of December, 1885, this defendant was arraigned in this court on each of said indictments, and on the sixteenth day of December, 1885, pleaded not guilty to each of said indictments, and to the alleged offense charged in each.

11 That said three indictments were all found for unlawful cohabitation against the defendant before said grand jury, and examined on one oath and one examination as to the alleged offense during the entire time mentioned in all of said three indictments, and upon the testimony of witnesses given on an examination covering the whole time specified in said three indictments.

That on the third day of December, 1885, this defendant was first put upon his trial in this court, before the court and a jury duly empaneled, sworn, and charged to try the issue presented by the third of said indictments, to wit, the indictment charging unlawful cohabitation from the first day of January to the first day of December, 1885, and the plea aforesaid thereto, and such proceedings were had therein that on the thirty-first day of December, 1885, the said jury rendered in this court a verdict of guilty against the defendant, in manner and form as charged in said third indictment, and said verdict is of record in this court, and not set aside or in any wise impeached or reversed.

That on the fourth day of January, 1886, the defendant was put upon his trial in this court before the court and a jury duly empaneled, sworn, and charged to try the issue presented by the second of said indictments, to wit, the indictment charging unlawful cohabitation from the first day of January, 1884, to the thirty-first day of December, 1884, and the plea aforesaid thereto, and such proceedings were had therein, that on the fifth day of January, 1886, the said jury rendered in this court a verdict of guilty against this defendant, in manner and form as charged in said second indictment, and said verdict is of record in this court, and not set aside or in any wise impeached or reversed.

And the defendant saith that he is the indentical person charged in all said three indictments, and the offense charged in all

12 said indictments is one continuous offense, and the same offense, and not divisible, and he prays judgment that he be discharged and dismissed from the premises in the indictment to which this plea is made.

To which said plea of defendant the said United States assistant district attorney orally demurs, for the reason and on the grounds that said plea does not state facts sufficient in law to be a bar to the further prosecution of this indictment, which said demurrer to said plea is submitted to the court for decision.

And the court now here, being fully advised in the premises, does consider that said demurrer and the grounds therein stated is well taken, and that the same ought to be sustained, and the court does order that the said demurrer be, and the same is hereby, sustained;

to which ruling and order of the court said defendant, by his said counsel, duly excepts. Said defendant then being in court ready for trial, thereupon came the following jury, to wit, John R. Brown, Charles Blackwell, John Wheeler, John McDonald, E. N. Williams, William Lund, James Thompson, John Huss, W. H. Wattis, Alexander Bowman, Walter Holbrook, George Corey, good and lawful men, residents of the first judicial district, who, being duly empaneled and sworn well and truly to try the cause, sat together and heard the testimony of the witnesses in the case. And said cause being submitted without argument of counsel said jury heard the instructions of the court, retired from the bar of the court, in charge of a sworn officer, to consider of their verdict, and subsequently returned into court, and, being called, answered to their names, and on their oaths say: "We, the jury empaneled in the above-entitled cause, find the defendant, Lorenzo Snow, guilty as charged in the indictment."

Whereupon the court fixes Saturday, January 16th, at 10 o'clock a. m., as time for passing sentence.

ORLANDO W. POWERS, *Judge.*

In open court, Tuesday, Jannary 5th, A. D. 1886.

13 *Verdict of Jury.*

(Title of court and cause.)

We, the jury empaneled in the above-entitled cause, find the defendant, Lorenzo Snow, guilty as charged in the indictment.

W. S. HOLBROOK, *Foreman.*

Ogden city, Utah, Jan., 1886.

Endorsed: No. 741. Filed January 5th, 1886. A. C. Emerson, clerk.

Motion for New Trial.

(Title of court and cause.)

And now comes the defendant and moves the court to set aside the verdict herein and order a new trial on these grounds:

1. The court misdirected the jury in matters of law.
2. The court erred in the decision of questions of law arising during the course of the trial.
3. The verdict is contrary to law.
4. The verdict is contrary to evidence.

Dated January 8th, 1886.

F. S. RICHARDS,
Att'y for Defendant.

Endorsed: No. 741. Filed January 7, 1886. A. C. Emerson, clerk, by Isaac Goldberg, deputy clerk.

Order Overruling Motion for New Trial.

(Title of court and cause.)

This cause came regularly on to be heard this day, upon the motion of said defendant for a new trial of this cause, for the reasons and on the grounds as in said motion stated.

14 The said motion being submitted to the court for decision and determination, and the court now here being fully advised in the premises, it is ordered by the court that said motion for a new trial herein be, and the same is hereby, overruled and denied.

To which ruling of the court said defendant duly excepts.

ORLANDO W. POWERS, *Judge.*

In open court, Saturday, January 16, A. D. 1886.

Judgments on Indictments Nos. 741, 742, 743 *for Offenses of the Years* 1883, 1885, *and* 1884 *Respectively.*

The defendant and his counsel, F. S. Richards and C. C. Richards, Esqrs. (*of counsel*), came into court. The defendant was duly informed of the nature of the indictments found against him on the 5th day of December, A. D. 1885, by the grand jury of this court for the crime of unlawful cohabitation committed as stated in said indictments and during the time as follows, viz: Indictment No. 741 between the first day of January, A. D. 1883, and the thirty-first day of December, A. D. 1883; indictment No. 742 between the first day of January, A. D. 1885, and the first day of December, A. D. 1885; indictment No. 743 between the first day of January, A. D. 1884, and the thirty-first day of December, A. D. 1884; of his arraignment and plea of not guilty, as charged in said three indictments, on the sixteenth day of December, A. D. 1885; of his trial and the verdicts of the juries; indictment No. 742, "Guilty as charged in the indictment," on December 31, 1885; indictment No. 743, "Guilty as charged in the indictment," on January 5, 1886; indictment No. 741, "Guilty as charged in the indictment," on January 5, 1886.

15 The said defendant was then asked if he had any legal cause to show why judgment should not be pronounced against him, to which he replied that he had none. And no sufficient cause being shown or appearing to the court thereupon the court renders its judgment: That whereas said Lorenzo Snow having been duly convicted in this court of the crime of unlawful cohabitation:

It is ordered, adjudged, and decreed that said Lorenzo Snow be imprisoned in the penitentiary of the Territory of Utah for a period of six months, and that he do forfeit and pay to the United States a fine of three hundred dollars and the costs of this prosecution, and that he do stand committed into the custody of the U. S. marshal for said Territory until such fine and costs be paid in full. (As to indictment No. 741.)

And it is further ordered, adjudged, and decreed that at the ex-

piration of the sentence and judgment rendered on said indictment No. 741 said Lorenzo Snow be imprisoned in the penitentiary of Utah Territory for a period of six months, and that he do forfeit and pay to the United States the sum of three hundred dollars and the costs of this prosecution, and that he do stand committed into the custody of the U. S. marshal for said Territory until such fine and costs be paid in full. (As to indictment No. 742.)

And it is further ordered, adjudged, and decreed that at the expiration of the sentence and judgment as last above rendered on said indictment No. 742 said Lorenzo Snow be imprisoned in the penitentiary of Utah Territory for a period of six months, and that he do forfeit and pay to the United States the sum of three hundred dollars and the costs of this prosecution, and that he do stand committed into the custody of the U. S. marshal for said Territory until such fine and costs be paid in full. (As to indictment No. 743.)

16 The said defendant, Lorenzo Snow, is remanded into the custody of the United States marshal for Utah Territory, to be by him delivered into the custody of the warden or other proper officer in charge of said penitentiary. And said warden or other proper officer of said penitentiary is hereby commanded to receive of and from the said United States marshal him, the said Lorenzo Snow, convicted and sentenced as aforesaid, and him, the said Lorenzo Snow, keep and imprison in said penitentiary for the periods as in this judgment ordered and specified.

Counsel for said defendant moves the court that as said defendant has filed in this court a notice of appeal to the supreme court of Utah Territory from the order overruling defendant's motion for a new trial and from the judgment of this court made and entered, this defendant be admitted to bail pending such appeal and the hearing thereof in said supreme court. Whereupon the court orders that said defendant be admitted to bail in each of said cases, in the sum of five thousand dollars in each case, with two good and sufficient sureties.

And on motion of said defendant's counsel it is ordered that said defendant have ten days additional time to prepare, file, and serve bills of exceptions in each case.

ORLANDO W. POWERS, *Judge.*

In open court, Saturday, January 16, A. D. 1886.

Notice of Appeal.

(Title of court and cause.)

Please take notice that the said Lorenzo Snow, the appellant herein, appeals to the supreme court of Utah Territory from the order of the court overruling the motion for a new trial on the in-

17 dictment for 1883, made on the sixteenth day of January, 1886; also from the final judgment rendered herein against the appellant on said sixteenth day of January, 1886.

Dated January 16, 1886.

F. S. RICHARDS AND
BENNETT, HARKNESS & KIRKPATRICK,
Attorneys for Appellant.

Endorsed: No. 741. Filed January 16, 1886. A. C. Emerson, clerk.

I hereby accept service of a copy of the within notice this 16th day of January, 1886.

V. BIERBOWER,
Asst. U. S. District Att'y.

Appeal Bond.

TERRITORY OF UTAH, } ss:
County of Weber, }

An indictment, No. 741, having been found on the fifth day of December, A. D. 1885, in the district court of the first judicial district of Utah Territory, charging Lorenzo Snow with the crime of unlawful cohabitation, and he having been heretofore convicted and this day sentenced on said charge, and having appealed to the supreme court of Utah Territory, and by order of said district court been admitted to bail pending said appeal in the sum of five thousand dollars, we, David H. Peery and Hyrum S. Young, both residents and householders in the Territory of Utah, do hereby undertake that the above-named Lorenzo Snow will appear and answer the charge above named, in whatever court the same may be prosecuted, and will at all times hold himself amenable to the orders and process of the court, and, if the judgment of said district court
18 shall be affirmed, will appear and render himself in execution of judgment, or, if he fail to perform either of these conditions, we will pay to the United States the sum of five thousand dollars.

LORENZO SNOW. [SEAL.]
D. H. PEERY. [SEAL.]
H. S. YOUNG. [SEAL.]

Acknowledged before and approved by me this 16th day of January, A. D. 1886.

[SEAL.] A. C. EMERSON, *Clerk.*

TERRITORY OF UTAH, } ss:
County of Weber, }

David H. Peery and Hyrum S. Young being duly sworn, each for himself says: That he is a resident and householder in the Territory of Utah, and is worth the sum of five thousand dollars, the amount specified in the foregoing as the penalty thereof, over and above all his just debts and liabilities, exclusive of property exempt from execution.

D. H. PEERY.
H. S. YOUNG.

Subscribed and sworn to before me this 16th day of January, A. D. 1886.

[SEAL.] A. C. EMERSON, *Clerk.*

Endorsed: No. 741. Approved and filed January 16, 1886. A. C. Emerson, clerk.

Bill of Exceptions.

(Title of court and cause.)

This case came on for trial before the court and a jury duly impanneled and sworn on the 5th day of January, 1886.

The evidence given in the case was the same as on the hearing of the case No. 743, against said Lorenzo Snow, for unlawful cohabitation in 1884, except as follows: The evidence related to 1883,
19 and it was admitted that the wife, Adeline, who was not present, would testify, if called, that she had not in any wise lived with the defendant in 1883, and it was agreed that the jury might consider the case as if she had so testified.

The charge of the court was the same, except such verbal changes as would make it applicable to 1883, and the case not being argued to the jury by counsel, the court omitted that clause instructing the jury that they must take the law from the court.

The defendant took the same exceptions to the charge of the court to the jury.

The defendant asked the same instructions, changing the date of the first instructions so they would apply to 1883, instead of 1884, and the instructions were in like manner refused, and defendant took the same exceptions to the refusal.

The foregoing bill of exceptions is correct and is settled, and it is ordered that the bill of exceptions, on appeal in the case of the United States *vs.* Lorenzo Snow, for unlawful cohabitation in 1884, as modified hereby, stand for a bill of exceptions in this case, and be used on the hearing as fully and with like effect as if incorporated in this bill.

Dated January 20, 1886.

ORLANDO W. POWERS,
Judge First District Court.

Filed January 22, 1886.

A. C. EMERSON, *Clerk.*

It is stipulated that the bill of exceptions in the case of the United States *vs.* Lorenzo Snow, for unlawful cohabitation in 1884, as modified by the statements in this bill, may be used on the hearing on appeal in this case as fully and with like effect as if incorporated in the bill of exceptions in this case.

Dated January 20, 1886.

V. BIERBOWER,
Assistant U. S. District Attorney.

F. S. RICHARDS AND
BENNETT, HARKNESS & KIRKPATRICK,
Attorneys for Appellant.

Filed January 22, 1886.

A. C. EMERSON, *Clerk.*

20 We certify that the within and foregoing is a full, true, and correct transcript in this case.

W. H. DICKSON,
U. S. Dist. Att'y.
F. S. RICHARDS AND
BENNETT, H. & K.,
Att'ys for Appellant.

21 Supreme Court, Utah Territory.

THURSDAY, *January* 28*th*, *A. D.* 1886.

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THE UNITED STATES, Respondent,
vs.
LORENZO SNOW, Appellant. } From 1st Dist. No. 741.

This cause coming on regularly for hearing was argued by R. Harkness and F. S. Richards for appellant, and W. H. Dickson for respondent, submitted, and taken under advisement.

SATURDAY, *February* 13*th*, *A. D.* 1886.

A session of the supreme court of Utah Territory was held this day, beginning at 2 o'clock p. m., pursuant to adjournment.

Present and presiding, the Hon. C. S. Zane, chief justice; present also the Hon. J. S. Boreman, associate justice, and the Hon. O. W. Powers, associate justice; the clerk, marshal, and members of the bar. Court was duly opened.

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THE UNITED STATES, Respondent,
vs.
LORENZO SNOW, Appellant. } From 1st Dist. No. 741.

22 This cause having been heretofore argued and submitted and the court being sufficiently advised thereupon, it is now here considered, ordered, and adjudged, Zane, C. J., dissenting, that the judgment of the district court therein be, and it is hereby, affirmed.

Remittitur is stayed for thirty days.

23 *Opinion Supreme Court, Utah Territory.*

Indictment for year 1883.

UNITED STATES *vs.* LORENZO SNOW.

POWERS, *J.:*

The main question for our consideration in this case is: Can a man, while recognizing, supporting, and holding out to the world his lawful wife as a wife, live with and hold out, support, and recognize as a wife another woman and not be liable to punishment under the Edmunds law? In other words, if such a state of facts

exist as is indicated by the question stated, is the man guilty of cohabitation?

To answer this question we must interpret the Edmunds law. We must consider the occasion and necessity for the law. We must ascertain the mischief felt and the object and remedy in view. Dwarris on Statutes, 194; Wenner *vs.* Smith, January term, 1886. We must try and give the law such an interpretation as will effect the purpose for which it was passed. We must arrive at its true spirit and meaning, and try and read its purpose aright. The question is an important one; perhaps as important as any that has been raised with reference to this most important statute. Its determination involves the question whether the law has any force or vitality and whether it is sufficient to accomplish the purpose which brought it into being, or whether it shall be henceforth a dead statute.

The American idea of government is founded on the Christian idea of home, where one father and one mother, each the equal of the other, happy in the consciousness of mutual and eternal affection, rear about the hearthstone an intelligent and God-fearing family. Patriotism springs from love of country, which is born of a love for home. Virtue and morality are the flowers which adorn the hearthstone of the true family.

It was said in Reynolds *vs.* The United States, 98 U. S., 165, that "marriage while from its very nature a sacred obligation, is nevertheless, in most civilized nations, a civil contract, and is usually regulated by law. Upon it society may be said to be built, and out of its fruits spring social relations and social obligations and duties with which government is necessarily required to deal. In fact, according as monogamous or polygamous marriages are allowed, do we find the principles on which the government of the people, to a greater or less extent, rests. Professor Lieber says polygamy leads to the patriarchial principle and which, when applied to large communities, fetters the people in stationary despotism, while that principle cannot long exist in connection with monogamy. Chancellor Kent observes that this remark is equally striking and profound. 2 Kent, Com. 81, note (*e*). An exceptional colony of polygamists, under an exceptional leadership, may sometimes exist for a time without appearing to disturb the social condition of the people who surround it; but there cannot be a doubt that, unless restricted by some form of constitution, it is within the legitimate scope of the power of every civil government to determine whether polygamy or monogamy shall be the law of social life under its dominion." In the same case, on page 164, it is said that "polygamy has always been odious among the northern and western nations of Europe, and, until the establishment of the Mormon church, was almost exclusively a feature of the life of the Asiatic and of the African people. At common law, the second marriage was always void (2 Kent Com. 79), and from the earliest history of England polygamy has been treated as an offense against society. * * * By the statute of 1 James II (C. 11) the offence, if committed in England or Wales, was made punishable in the civil courts, and the punishment was death. As this statute was limited in its operation to England and Wales, it

was at a very early period re-enacted, generally, with some modifications, in all the colonies. In connection with the case we are now considering, it is a significant fact that on the 8th of December, 1788, after the passage of the act establishing religious freedom, and after the convention of Virginia had recommended as an amendment to the Constitution of the United States the declaration in a bill of rights that "All men have an equal, natural, and unalienable right to the free exercise of religion, according to the dictates of his conscience," the Legislature of that State substantially enacted the statute of James II, death penalty included, because, as recited in the preamble, "it hath been doubted whether bigamy or polygamy be punishable by the laws of this Commonwealth." 12 Hennings Statute, 691. From that day to this we think it may safely be said that there never has been a time in any State of the Union when polygamy has not been an offense against society, cognizable by the civil courts and punished with more or less severity. Polygamy has been and now is prohibited by the law of Mexico, so that even before this Territory was ceded to the United States the practice was unlawful here under the laws of our sister Republic as it was at the common law and by the statutes of the States. In 1862 Congress passed an act against polygamy, which was declaratory merely of the common law then in force, with the addition that it fixed a penalty for its violation. The Reynolds case declared the law valid, and also held that polygamy could not be carried on lawfully under the cloak of a religious faith. In that case it was said that "laws are made for the government of actions, and while they cannot interfere with mere religious beliefs and opinions, they may with practices. Suppose one believed that human sacrifices were a necessary part of religious worship, would it be seriously contended that the civil government under which he lived could not interfere to prevent a sacrifice? Or if a wife religiously believed it was her duty to burn herself upon the funeral pile of her dead husband, would it be beyond the power of the civil government to prevent her carrying her belief into practice? So here, as a law of the organization of society under the exclusive domain of the United States, it is provided that plural marriages shall not be allowed. Can a man excuse his practices to the contrary because of his religious belief? To permit this would be to make the professed doctrines of religious belief superior to the laws of the land, and in effect to permit every citizen to become a law unto himself. Government could exist only in name under such circumstances."

Notwithstanding the fact that polygamy was an offense at the common law, and held in abhorrence by the Christian world, and that the laws for its suppression are declared by the highest court to be constitutional, the Mormon church, which had established itself in this Territory and had built its structure upon the corner-stone of plural marriage, continued to grow and flourish and to defy the law. It preached plural marriage, practiced it openly, and boldly proclaimed its right to do so, the laws and customs of the country to the contrary notwithstanding. It claimed that the practice was

right, and while all its members did not practice polygamy,
24 all advocated and defended the practice. No man is a true Mormon who does not believe in the doctrine of plural marriage. The church was active in proselyting, and brought thousands of converts from foreign lands each year. It built up a strong and powerful government, uniting church and state, which, in its laws and practies, is antagonistic to the very foundation principles of the United States. Here, then, was a people building up an empire within the Republic, whose members defied the laws of the land, and boldly advocated and permitted practices which were at war with the laws, customs, and traditions of the American people. The statute of 1862 had proved inadequate, and in 1882 what is termed the Edmunds act was adopted. This act in its first section provides for the punishment of persons within the Territories who, having a husband or wife living, marry another, and also provides for the punishment of any man who simultaneously, or on the same day, marries more than one woman.

The act, therefore, makes plural marriage an offense. It provides for the punishment of the act of plural marriage, without reference to its consummation or to cohabitation.

The third section of the act provides for the punishment of any male person who cohabits with more than one woman. It therefore makes unlawful the appearance of marriage. The act, taken as a whole, is plainly seen to be dealing with the marriage relation. It is endeavoring to put an end to the evils resulting from plural marriages, and from the evil example set before the world by the polygamous household. It is the third section of the act that we must construe; and in arriving at its proper construction we are aided greatly by the decisions of this court and of the Supreme Court of the United States in the cases of the United States *vs.* Cannon, where it was held that the misdemeanor against which the act is directed is the offense against the marriage relation, and that, to establish the guilt of a party, evidence of sexual intercourse is unnecessary. The Supreme Court in that case said that the statute "seeks not only to punish bigamy and polygamy, when direct proof of the existence of these relations can be made, but to prevent a man from flaunting in the face of the world the ostentation and opportunities of a bigamous household, with all the outward appearances of the continuance of the same relations which existed before the act was passed." It was said by Boreman, J., in the United States *vs.* Cannon, June term, 1885, that the object of this statute was, "judging from the whole act, to aid in breaking up polygamy, and the pretense thereof. The well-recognized difficulty of reaching the polygamous cases by reason of having to prove marriage, and by reason of the fact that the statute of limitations bars prosecutions after three years, no doubt led Congress to pass this act. It was sought to break up the polygamic relation, * * * whether marriage took place or not. The pretense of marriage—the living, to all intents and purposes, so far as the public could see, as husband and wife, a holding out of that relationship to the world, were the evils sought to be eradicated. It reaches out and embraces all men living and dwelling with more

than one woman as if married, whether any marriage has ever taken place or not." And again, in the same case, it is said that the law-making power saw that the mere fact of a plural marriage is an evil example; that the living and associating with two or more women as if married to all tends to weaken the popular appreciation of true marriage, and this is detrimental to society. Therefore, for the purpose of protecting the marriage relation, the law under discussion was passed. It is directly aimed at the suppression of polygamy and the polygamous household as an evil example, dangerous in its tendency to the family relation as recognized by this nation. It was not the offense against chastity merely, but the offense against the family, which Congress intended to suppress.

And in United States *vs.* Musser, June term, 1885, Zane, C. J. said: "The end of the laws was the protection of the monogamous marriage, and the suppression of polygamy and unlawful cohabitation were but means to that end. It is proper also to take into consideration the conditions, as the national legislature anticipated and understood them, in which the law was to be applied and enforced. They knew that the time had elapsed within which a very large portion of those living in polygamy could be punished for that offense, and that many of these were among the most influential men in society, being the heads of the church, and that the example of their continuing to live with their plural wives, under a claim of divine right, would be a scandal to society and a menace to the lawful marriage; that such examples would be a continu*ing* invitation and apparent justification for their followers to either secretly or openly violate the law. Congress therefore forbade plural marriage in appearance only, as well as in form, and by the example of punishment it doubtless intended to eradicate the example of apparent plural marriages, as well as the plural marriage in form." Such being the intent and object of the section of the statute under consideration, how can it be possible to answer the question stated at the outset of this opinion in the affirmative? If the intent and purpose of the law are to protect monogamic marriage, how are the intent and purpose carried out if a man, while maintaining, supporting, recognizing, and holding out his lawful wife, may yet forsake her and revel in the arms of another? How can the example of plural marriage be made productive of greater evil than to permit such things as indicated? In this very case—the case of one of the twelve apostles of the Mormon church—Harriet Snow, one of the plural wives, testified that "when a lady gets so that she cannot bear children she is released from some of her duties as a wife." The husband may then seek the charms of a younger and fairer woman. Can that be done with impunity and in defiance of a statute passed, as the courts say, to prevent the evil appearance and example of the plural family, and to prevent polygamists from flaunting in the face of the world the opportunities of the polygamous household? If so, then the act should be entitled "An act to enable a man to forsake his lawful wife and fly to the arms of his concubine."

But is is argued, because the man has been dwelling and dining with another woman, therefore he has not been cohabiting with his

wife. He must actually dwell with her, it is said. Is this true? Must a man take his meals with his wife to be living with her? Must they be under the same roof? If so, what becomes of the large class of commercial men who pass but few days at home during the whole year? Must a man pass a certain number of days and nights with his wife in order to be considered as living with her? Certainly not. As the husband goes about his daily avocation he is living with his wife. When he rides with her, walks with her, or talks with her, when he visits her, he is living with her. If he sees her daily or but a few times a year, he is living with her. He is cohabiting with her. If there has been no legal separation or divorce, whether one roof shelters them or not, if he holds her out to the world as a wife, supports her and recognizes her as a wife, they are living together. It is a presumption that is conclusive, and is founded upon reasons of public policy. The law presumes a usual and ordinary state of things rather than a peculiar and exceptional condition. It supposes legality rather than crime, and virtue and morality rather than the opposite qualities. Canjolle *vs.* Ferrie, 23d New York, 138. The legitimacy of offspring born during wedlock is presumed, even while the parties are living apart by mutual consent. *Ibid*, 139.

25 If, when the Edmunds act was passed, the defendant had withdrawn himself from all but his lawful wife and dwelt with her, ostensibly refraining from dwelling with his illegal wives, though he supported them and visited them, the presumption of cohabitation would not have arisen. The presumption of innocence would put the prosecution to its proof that he lived with more than one woman.

If we are not right, then the law can be easily evaded. A man can fill a house with plural wives and himself live in another house. He can hold them out to the world as wives, support them, visit them, and because they do not physically dwell or live together he would go free. An interpretation of the law like that sought by the defendant would lead to absurd results. We have considered the intention of the law, and we would violate well-known rules of construction to hold that it will not cover a case like the present.

In United States *vs.* Fisher, 2 Cranch, 399, it is said that when a law is plain and unambiguous, whether it be expressed in general or limited terms, the Legislature should be understood to mean what they plainly expressed, and, consequently, no room is left for construction. But if, from a view of the whole law, or from other laws in *pari materia*, the evident intention is different from the literal import of the terms employed to express it in a particular part of the law, that intention should prevail, for that, in fact, is the will of the Legislature. * * * So, if the literal expressions of the law lead to absurd, unjust, or inconvenient consequences, such a construction should be given as to avoid such consequences, if from the whole purview of the law and giving effect to the words used it may be fairly done. These rules are not merely artificial; they are as clearly founded in plain sense as they are certainly warranted by the principles of the common law.

In *Ex Parte* Ellis, 11 Cal., 224, it is stated that as it is the duty of

courts to execute all laws according to their true intent and meaning, that intent, when collected from the whole and every part of the statute taken together, must prevail, even over the literal sense of the terms, and control the strict letter of the law when the letter would lead to possible injustice, contradiction, and absurdity.

And in Smith's Com., 663–664, this language is used: "When in a particular construction of a statute applied to a case which it seems by its terms to include there follows from such construction an absurd consequence, respect for the Legislature will induce the court from thence to conclude that some other construction which will not produce such a consequence ought to be adopted. Hence, every construction which leads to an absurdity ought to be rejected. It is said that this rule should be followed even in cases where there is neither obscurity nor anything equivocal in the law itself, for the absurdity of the literal sense of the law itself does not proceed merely from the obscurity or any other fault in the expression, but from the narrow limits of the human mind, which cannot foresee all cases and circumstances, or include all the circumstances or consequences of what is ordained; that it is impossible for the Legislature to enter into immensity of detail. It can only make laws in a general manner, and in applying their acts to particular cases the construction ought to be conformable to the intention of the Legislature. It cannot be presumed that the Legislature intended anything absurd. When, therefore, the words, when taken in their obvious and proper sense, lead to it, it is necessary to turn them from that sense just as far as is sufficient to avoid an absurdity, if, from the whole purview of the law and giving effect to all the words used in it, it may fairly be done."

"Rational interpretation is when the words of an instrument do not express the author's intention perfectly, but either exceed or fall short of it, so that the intention is to be collected from probable or rational conjectures only and mixed interpretation—that is, an interpretation partly literal and partly rational, is when the author's words, though they do express his intention when rightly understood, are in themselves of doubtful meaning, rendering it necessary to have recourse to the like conjectures to find out in what sense the words were used, in which case the intention is collected from the words, but not without the help of other conjectures. (Rutherford's Institutes, B. 2, ch. 7, sec. 3.)

By means of these rules of interpretation the spirit of the text is saved from sacrifice to its strict letter. When the provisions of a statute or of the organic law are clear and precise, and attended with no difficulty in the application, there is no room for any interpretation or comment. The intention of the lawgiver is what must be adhered to. But if the language of the instrument is indeterminate, vague, or susceptible of a more or less extensive sense, we must presume the intention according to the laws of reason and equity, and for this purpose it is necessary to pay attention to the nature of the things to which the question relates. Knowles *vs.* Yates, 31 Cal., 86.

Kent says: "It is an established rule in the exposition of the

statutes that the intention of the lawgiver is to be deduced from a review of the whole and every part of the statute, taken and compared together. The real intention, when accurately ascertained, will always prevail over the literal sense of terms. When the expression in a statute is special and particular, but the reason is general, the expression shall be deemed general;" and he also holds that the reason and intention of the lawgiver will control the strict letter of the law when the letter would lead to palpable injustice, contradiction, and absurdity. (1 Kent Com., 461, 462.)

We think that the court below charged the jury correctly. To hold otherwise would, as we have seen, lead to absurd consequences and to an absurd construction of the Edmunds act. The following is the language of the court:

"If you (the jury) find beyond a reasonable doubt that the defendant had during the year 1883 a legal wife living in Brigham City, Box Elder county, Utah Territory, from whom he was undivorced; that he recognized her as his wife, held her out as such, and contributed to her support as such wife, and that during that year he lived with the woman Minnie, recognizing her as his wife, associated with her as such, and supported and held her out as a wife, then the offense of unlawful cohabitation is complete, and you will find the defendant guilty. The legal wife in this case is the woman whom the defendant first married."

The principal question in this case and the general principle underlying the instruction to the jury which we are considering was, we think, decided by this court at the present term in the case of The United States *vs.* Lorenzo Snow, indictment for the year 1885. That was a case against the same defendant. This court, speaking by Zane, chief justice, said: It appears from the evidence that appellant boards and lodges with his last wife and visits his other wives occasionally, though not very often; that during the year 1885 he has not lodged or taken a meal with any one of the others; that he furnishes them houses to live in and supports them; that he introduces them publicly as his wives, and by his language and conduct holds them out to the world as such.. The evidence proved beyond controversy that defendant cohabits with his polygamous wife, Minnie. The remaining fact to find from the evidence is, has he at any time during the year 1885 cohabited with the other women named in the indictment, or any one of them? It appears from the evidence that defendant is seventy-two years old, and has married nine wives, and that seven of those wives are still living. To the first he was married in his youth. As his passion for one wife became satiated and dulled by indulgence and gratification, and as his lust was again kindled by the appearance of a younger and fresher, or possibly a more attractive woman, he would marry again, until his marriages have been repeated nine times, and now, at the
26 age of 72 years, he is found with seven living wives, the last being comparatively young, with an infant in her arms. He furnished homes for, supports, associates with, claims, holds out, and flaunts in the face of society all these seven women as his wives, and yet he says he cohabits with but one. The law must character-

ize his relation to them, and *his* intercourse and association with him.

And the court proceeds to show that the law characterizes such conduct as cohabitation. Again, the court says:

"A lawful marriage of itself affords a strong presumption of cohabitation, because such cohabitation is in accordance with duty and usually attends such a marriage."

The court then says that when to this presumption are added the further inferences from the following facts that the defendant claimed his legal wife all the time as his wife, and that she claims to be such; "that he provides for her a home and the necessaries and comforts of life; that they were on good terms; that he took her to the theatre, out riding, visited her occasionally at her home, and was the father of her children, the conclusion removes every reasonable doubt that he cohabited with her as his wife. When they were associating together, she was not his paramour or his friend simply; he then had and still has all the rights and opportunities of a husband and she those of a wife. They were living and were together. They were living together. Under such circumstances the law will not permit them to say they were together merely as friends and not as husband and wife."

Apply the foregoing reasoning to the case at the bar. The testimony shows conclusively that the defendant had a legal wife living, from whom he was undivorced. He recognized her as his wife; he supported her as such, and he held her out to the world as such. In the language of the chief justice, "he then had and still has all the rights and opportunities of a husband and she those of a wife." He held her out to the world as a wife. By that is meant and by that is understood such language and conduct as leads the world to believe that the parties are living and associating as husband and wife. That is the meaning of the term "holding out." When a man lives and associates with two or more women as a husband with his wife he is guilty of cohabitation. We think in the present case that the law will not permit the defendant to deny that he cohabited with his legal wife. He was undivorced; they had not separated; he supported her as his wife; he recognized her as a wife; he held her out as his wife, or, in other words, his language and conduct with her and towards her were such as to lead the public to conclude that they were living as husband and wife. Under such a state of facts, and adding the further facts stated in the opinion of Justice Boreman in the case for 1884, a case in which the facts are identical with this, the strong presumption of cohabitation which arises from the simple fact of lawful marriage becomes conclusive and cannot be rebutted.

Then, therefore, — we take into consideration the fact that the defendant did not deny dwelling with the woman Minnie, whom he held out to the world and supported as his wife, the charge of the court is seen to be correct.

The other questions arising upon the record are disposed of in

the other cases against the same defendant decided this term. The judgment of the court below is affirmed.

Boreman, J., concurs.

Zane, C. J., dissents.

Filed February 13th, 1886.

27 ZANE, C. J., dissenting:

The law which the defendant was convicted of violating declares "that if any male person * * * cohabits with more than one woman he shall be deemed guilty of a misdemeanor," &c. The term cohabitation, as here used, means dwelling or associating together, apparently as husband and wife. The conduct of the parties with respect to each other must present the semblance of marriage. They must spend some part of their time together. That they dwell in the same country, city, or neighborhood is insufficient; They should live or associate together a part of the time. The court below instructed the jurors that if they believed from the evidence that defendant had a lawful wife living; that he contributed to her support, and recognized and held her out as his wife, cohabitation as to her was established. In effect, the jury was told that lawful marriage, contribution to support, and recognition and holding out either constituted cohabitation or afforded a conclusive presumption thereof. I think that the existence of

28 such facts alone would not constitute cohabitation, nor does the laws conclusively presume cohabitation from them. It appears from the evidence that Adeline (one of the women named in the indictment) was defendant's lawful wife, and the evidence does not show that defendant, during the time mentioned in the indictment, was ever in her company, or that during such time he spoke to her or she to him. It was argued by the parties on the trial that the jury might consider the case as if Adeline had stated before them that she had not in any wise lived with defendant during the time mentioned in the indictment. I am of the opinion that the evidence was insufficient to constitute cohabitation with Adeline, the lawful wife, nor was cohabitation with her conclusively presumed, and that the charge to the jury was erroneous in the respect pointed out. I therefore dissent from the judgment of the court.

Filed February 13, 1886.

29 TERRITORY OF UTAH, } ss:
Salt Lake County, }

I, Ezra T. Sprague, clerk of the supreme court of said Territory of Utah, do hereby certify that the annexed and foregoing is a full, true, and correct copy of the record, proceedings, and opinion in and of said court in the cause therein entitled, and of dissenting opinion of the chief justice therein, on file or of record at my office.

In testimony whereof I have hereunto set my hand and the seal of said court this 20th day of February, A. D. 1886.

[Seal Supreme Court, Territory of Utah, United States of America.]

E. T. SPRAGUE, *Clerk.*

30 *Conviction for Unlawful Cohabitation in* 1883.

Supreme Court, Territory of Utah.

UNITED STATES *vs.* LORENZO SNOW.

To the Hon. C. S. Zane, chief justice of said court:

The petition of Lorenzo Snow respectfully shows:

That in this court a final judgment was recently rendered, affirming the judgment of the district court of the first judicial district of said Territory, by which your petitioner was convicted and sentenced for the crime of unlawful cohabitation in the year 1883. The full record of such conviction, sentence, and the judgment of affirmance in this court, duly certified by the clerk thereof, is annexed, and herewith presented, and from which it will appear that your petitioner was convicted on an indictment under section 3 of chap. 47 of the laws of the United States, approved March 22d, 1882; that in said case there was drawn in question the validity of said statute as applied to the case of your petitioner, and the construction and authority thereof.

And your petitioner further shows that various errors, prejudicial to him, in the construction of said statute, and in holding the same valid as an authority for the conviction of your petitioner intervened in said case, and he now assigns the following errors on said record, to wit:

Assignment of Errors.

1st. The court erred in holding the evidence sufficient to constitute an offense under said statute.

31 2d. The court erred in holding the defendant could not show there had been no sexual intercourse between him and women with whom he was charged with cohabiting.

3d. Court erred in sustaining the refusal to instruct the jury, as prayed by the defendant, in the following requests, separately prayed, to wit:

Defendant's second request. The term "cohabit" means "live with" or "dwell with," and in the act under which the defendant is indicted it means to live with as wives.

Defendant's third request. To constitute "cohabitation" there must be such a frequency or regularity and manner of association of a man and woman as to amount to a "living together," and distinguish the association from mere visits, and, so long as there is not a "living together," occasional visits do not amount to cohabitation.

Defendant's fourth request. The defendant, though living with one wife, could lawfully visit another and her children at reasonable times and for lawful purposes; and the purposes of inquiring concerning the health and welfare of such other wife and his children by her, of providing for their support, and the education, employment, and business of the children would be lawful. He is not required by law to break off friendly relations with any of his wives,

and may attend friendly or social or religious meetings at their houses.

Defendant's fifth request. Having more than one wife and claiming and introducing more than one woman as wives do not
32 constitute the offense charged. You must find, to justify a conviction, that he has lived with more than one within the time stated in the indictment.

Defendant's sixth request. The law assumes the defendant innocent until he is proven guilty beyond a reasonable doubt, and his guilt or innocence is to be determined by you, and what others or the public may have believed, or had reasons to believe, from his manner of living is not the issue, but you are to say from the evidence whether or not he did in fact live with more than one woman, as charged.

Defendant's seventh request. The defendant was not required to give any notice, public or otherwise, of his manner of life or his purposes, or whether he was or was not abstaining from cohabiting with more than one woman, and it is a sufficient defense if you find from the evidence that it is not shown, beyond a reasonable doubt, that he in fact did live or cohabit with more than one.

Defendant's eighth request. It is immaterial whether or not there was any change of conduct toward or of relations with his wives at the time of the passage of the Edmunds law, if at and prior to that time he was not violating the provisions of the act relating to cohabiting with more than one woman; and if in 1883 he has not so cohabited, he is innocent of the present charge, whether such innocence is the result of a change of relations with his wives or the result of a maintenance of former relations.

4th. There is error in sustaining the several clauses of the
33 charge to the jury, to each of which clauses the defendant excepted, to wit:

(*a.*) "It is not necessary that the evidence should show that the defendant and these women, or either of them, occupied the same bed, or slept in the same room, or dwelt under the same roof, neither is it necessary that the evidence should show that within the time mentioned in the indictment the defendant had sexual intercourse with either of them."

(*b.*) "The question is, were they living in the habit and repute of marriage? The offense of cohabitation is complete when a man, to all outward appearances, is living or associating with two or more women as wives. If the conduct of the defendant has been such as to lead to the belief that the parties were living as husband and wife live, then the defendant is guilty."

(*c.*) "Of course the defendant might visit his children by the various women, he may make direction regarding their welfare, he may meet the women on terms of social equality, but if he associates with them as a husband with his wife, he is guilty. The Edmunds law says there must be an end of the relationship previously existing between polygamists. It says that the relationship must cease."

(*d.*) "If you find beyond a reasonable doubt that the defendant had during the year 1883 a legal wife living in Brigham City, Box Elder

county, Utah Territory, from whom he was undivorced; that he recognized her as his wife, held her out as such, and contributed to her
support as such wife, and that during the same year he lived
34 in the same house with the woman Minnie, recognizing her
as his wife, associated with her as such, and supported and held her out as a wife, then the offense of unlawful cohabitation is complete, and you will find the defendant guilty. The legal wife in this case is the one whom the defendant first married."

Wherefore your petitioner prays the allowance of a writ of error to the said court removing said case to the Supreme Court of the United States.

LORENZO SNOW,
Per F. S. RICHARDS, AND
BENNETT, HARKNESS & KIRKPATRICK,
Attorneys.

35 [Endorsed:] Case 741 Supreme court, Utah Territory. United States *vs.* Lorenzo Snow, Petition for writ of error & assignment of errors.

A writ of error herein is allowed, and a citation will be issued on filing the usual bond in the sum of two hundred and fifty dollars. Dated February 23d, 1886. Charles S. Zane, chief justice sup. c't of Utah.

36 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the supreme court of Utah Territory and the honorable the judges of said court, Greeting:

Because in the record and proceedings, and also in the rendition of the judment in the supreme court of the Territory of Utah, being the highest court of law and equity of the said Territory in which a decision could be had, in a certain case wherein the United States were the plaintiff and respondent and Lorenzo Snow was the defendant and appellant, wherein was drawn in question the construction, effect, and validity of a statute of the United States, manifest errors have happened to the great damage of the said Lorenzo Snow, as by his complaint and the said judgment record appears, we being willing that error, if any hath been, shall be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, the 23d day of February, 1886.

[Seal Supreme Court United States of America, Territory of Utah.]

37 E. T. SPRAGUE,
Clerk of the Supreme Court of Utah Territory.

Allowed by—

HON. C. S. ZANE,
Chief Justice of the Supreme Court of Utah.

[Endorsed:] Case 741. United States *vs.* Lorenzo Snow. Writ of error.

38 The United States of America to the United States of America, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the office of the clerk of the supreme court of Utah Territory, wherein Lorenzo Snow is the plaintiff in error and you are the defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness my hand this 24th day of February, A. D. 1886.

C. S. ZANE,
Chief Justice of the Supreme Court of Utah Territory.

39 [Endorsed:] Case 741. Lorenzo Snow, pl'ff in error, *vs.* United States, def't in error. Citation.

A copy of the within citation was personally served on me Feb'y 24, 1886. W. H. Dickson, U. S. district att'y for Utah.

40 Know all men by these presents that we, James Sharp and John R. Winder, both of Salt Lake City, in the county of Salt Lake and Territory of Utah, are held and firmly bound unto the United States of America in the full and just sum of two hundred and fifty dollars, to be paid to the United States of America, their certain attorneys or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Whereas lately, at the January term of the supreme court for the Territory of Utah, in a criminal suit depending in said court between the United States and Lorenzo Snow, judgment was rendered against the said Lorenzo Snow, and he having obtained a writ of error and filed a copy thereof in the clerk's office of said court to reverse the judgment in the aforesaid suit, and a citation directed to the said United States citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next:

Now, the condition of the above obligation is such that if the said Lorenzo Snow shall prosecute his said writ to effect and answer all

damages and costs if he shall fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

February 24, 1886.

JAMES SHARP. [SEAL.]
JOHN R. WINDER. [SEAL.]

41 [Endorsed:] Case 741. Lorenzo Snow, pl'ff in error, *vs.* United States, def't in error. Bond on appeal. (Copy.)

The within bond is approved. February 24, 1886. C. S. Zane, chief justice sup. c't, Utah Territory.

42 TERRITORY OF UTAH, } ss:
County of Salt Lake, }

I, E. T. Sprague, clerk of the supreme court of said Territory of Utah, in obedience to the writ of error hereto attached, do return annexed hereto said writ, the petition therefor, the allowance thereof, assignment of errors, the citation thereon issued, with proof of service thereof, and a transcript of the record and proceedings, opinion, dissenting opinion of chief justice, and bond on writs of error—all in and of said court, in the cause in said writ described—to the Supreme Court of the United States; and I hereby certify that said transcript of the record, proceedings, opinion, dissenting opinion, and bond is a true, full, correct, and complete copy of the several originals thereof on file or of record in my office.

In witness whereof I have hereto set my hand and affixed the seal of said supreme court of Utah Territory, at Salt Lake City, this 24th day of February, A. D. 1886.

[Seal Supreme Court, Territory of Utah, United States of America.]

E. T. SPRAGUE, *Clerk.*

[Endorsed on cover:] Utah Territory supreme court. No. 1277. Lorenzo Snow, plaintiff in error, *vs.* The United States. Filed March 2, 1886.

118-346

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 1278.

LORENZO SNOW, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE SUPREME COURT OF THE TERRITORY OF UTAH.

FILED MARCH 2, 1886.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 1278.

LORENZO SNOW, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE SUPREME COURT OF THE TERRITORY OF UTAH.

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a *Transcript on Appeal.*

Supreme Court of Utah Territory. January Term, 1886.

UNITED STATES OF AMERICA, Respondent,
vs.
LORENZO SNOW, Appellant. } No. 742.

F. S. Richards and Bennett, Harkness & Kirkpatrick, attorneys for appellant; W. H. Dickson, U. S. dis't att'y.
Filed 25th of January, 1886.

E. T. SPRAGUE, *Clerk.*

1 *Transcript.*

UNITED STATES OF AMERICA, *Territory of Utah,* } *ss:*

Supreme Court of Utah Territory. January Term, 1886.

UNITED STATES OF AMERICA, Respondent,
vs.
LORENZO SNOW, Appellant.

Indictment.

At a stated term of the district court of the first judicial district in and for the Territory of Utah, begun and holden at the city of Ogden, within and for the district and Territory aforesaid, on the sixteenth day of November, A. D. 1885, and continued by adjournment to and including the second day of December, A. D. 1885.

2 UNITED STATES OF AMERICA *against* LORENZO SNOW.

The grand jurors of the United States of America, within and for the district aforesaid, in the Territory aforesaid, being duly empaneled and sworn, on their oaths do find and present that Lorenzo Snow, late of said district, in the Territory aforesaid, heretofore, to wit, on the first day of January, in the year of our Lord one thousand eight hundred and eighty-five, at the county of Box Elder, in the said district, Territory aforesaid, and within the jurisdiction of this court, and on divers others days and times thereafter, and continuously between said first day of January, A. D. 1885, and the first day of December, A. D. 1885, did then and there unlawfully live and cohabit with more than one woman, to wit, with Adeline Snow, Sarah Snow, Harriet Snow, Eleanor Snow, Mary H. Snow, Phœbe W. Snow, and Minnie Jensen Snow; and during all the periods aforesaid, at the county aforesaid, he, the said Lorenzo Snow, did unlawfully claim, live, and cohabit with all of said women as his wives, against the form of the statute of said United States in such case made and provided and against the peace and dignity of the same.

V. BIERBOWER,
Ass't U. S. District Att'y.
J. W. McNUTT,
Foreman of Grand Jury.

Indictment No. 742 filed in open court, properly endorsed a true bill, etc., and with the names of the witnesses, on the 5th day of December, 1885.

Court Minute Entry of Arraignment.

(Title of court and cause.)

In this action, the defendant, being in court, and upon the
3 indictment herein being read to him, was, on motion of R. K. Williams, Esq., of counsel for said defendant, given until Monday morning next to plead thereto.

ORLANDO W. POWERS, *Judge.*

In open court Friday, December 11th, A. D. 1885.

Demurrer to Indictment.

(Title of court and cause.)

The defendant demurs to the indictment in the above-entitled prosecution for the following causes:

1. Because there is no such body known to the law in Utah Territory as a grand jury of the United States, nor are there any such persons known to such law as United States grand jurors.

2. Because it does not appear in said indictment that it was found by a grand jury of said district court, nor does it appear therein that it was found by a grand jury of the first judicial district of Utah Territory, nor does it appear therein that it was found by a legally constituted grand jury.

3. Because the grand jury as set out and described in said indictment had no jurisdiction of said offense, nor has this court any jurisdiction thereof as presented by said grand jury.

4. Because the facts stated in said indictment do not constitute a public offense or violation of any law in operation in said Territory.

5. Because more than one offense is stated in the same indictment and count of the indictment in this: that said defendant is charged with cohabiting with more than one woman as his wives—"on the first day of January, in the year of our Lord one thousand eight hundred and eighty-five, at the county of Box Elder, in the said district, Territory aforesaid, and within the jurisdiction of this court, and on divers other days and times thereafter and continuously between said first day of January, A. D. 1885, and the first day of December, A. D. 1885, did then and there unlawfully live and
4 cohabit with more than one woman;" whereas the living with and cohabiting with more than one woman as his wives were not one continuous offense, but a new and distinct offense for every day said defendant is charged with so unlawfully living with and cohabiting with more than one woman as his wives.

6. Said defendant is therein charged with unlawfully living with and cohabiting with as his wives on the first day of January, 1885, and each and every day thereafter continuously until the first day of December, 1885, divers women, to wit: with Adeline Snow,

Sarah Snow, Harriet Snow, Eleanor Snow, Mary H. Snow, Phœbe W. Snow, and Minnie Jensen Snow; whereas the unlawful living with each and every one of said women as charged in said indictment is a separate and distinct offense, and not one single offense.

7. Because it is not stated in said indictment which of said named women is said defendant's first and legal wife, or whether either is his first and legal wife, nor who is his first and legal wife.

F. S. RICHARDS,
BENNETT, HARKNESS & KIRKPATRICK, AND
R. K. WILLIAMS,
Att'ys for Defendant.

Endorsed: No. 742. Filed December 15, 1885. A. C. Emerson, clerk. Service acknowledged December 15, 1885. V. Bierbower, ass't U. S. dis't att'y.

Order Overruling Demurrer. Defendant's Plea.

(Title of court and cause.)

This case came regularly on to be heard upon the demurrer of defendant to the indictment therein. Said demurrer was argued by counsel, R. K. Williams, for said defendant, and V. Bierbower, Esq., assistant United States attorney, for the Government, and submitted to the court for judgment and decision. And the court, now here, being fully advised in the premises, and due deliberation being thereupon had, it is ordered by the court that said demurrer be, and the same is hereby, overruled; to which order and ruling of the court the said defendant, by his said counsel, duly excepted.

Said defendant, upon being asked to plead to said indictment, pleads not guilty thereto.

ORLANDO W. POWERS, *Judge.*

In open court Wednesday, December 16, 1885.

Court Minutes of Trial.

(Title of court and cause.)

This cause came regularly on for trial. The United States was represented by V. Bierbower, Esq., assistant United States district attorney, and the said defendant by Messrs. Bennett, Harkness & Kirkpatrick, F. S. Richards, R. K. Williams, C. C. Richards, and H. H. Rolapp.

Ready for trial.

Thereupon came a jury, to wit: Frank Carson, A. I. Stone, Adam Kuhn, Alex. T. Bowman, George Bune, E. W. Smout, John Keck, Benjamin Garr, D. H. Spencer, Thomas Grant, Joseph Smith, and Frederick Foy, good and lawful men, residents of the first judicial district, who, being regularly empaneled, tried, and sworn well and truly to try the case, sat together and heard the testimony of the witnesses in part, and the further hearing and trial of the cause is adjourned until to-morrow morning at 10 o'clock.

ORLANDO W. POWERS, *Judge.*

In open court, Wednesday, December 30th, A. D. 1885.

The jury heretofore empaneled in this cause again sat together and heard the testimony of the witnesses in conclusion, the arguments of counsel, and the instructions by the court, retired from the bar of the court, in charge of a sworn officer, to consider of their verdict, and subsequently returned into court, and, being called, answered to their names, and on their oaths say: "We, the jury empaneled in the above-entitled cause, find the defendant, Lorenzo Snow, guilty as charged in the indictment."

Whereupon the court fixes Saturday, January 16th, 1886, as time for passing sentence.

ORLANDO W. POWERS, *Judge.*

In open court, Thursday, December 31st, A. D. 1885.

Verdict of Jury.

(Title of court and cause.)

We, the jury empaneled in the above-entitled cause, find the defendant, Lorenzo Snow, guilty as charged in the indictment.

D. H. SPENCER, *Foreman.*

Endorsed: Filed December 31st, 1885. A. C. Emerson, clerk.

Motion for New Trial.

(Title of court and cause.)

And now comes the defendant and moves the court to set aside the verdict and order a new trial herein on these grounds:

1. The court erred in the decision of questions of law arising during the course of the trial.
2. The court misdirected the jury in matters of law.
3. The verdict is contrary to evidence.
4. The verdict is contrary to law.

F. S. RICHARDS AND
BENNETT, HARKNESS & KIRKPATRICK,
Att'ys for Defendant.

Endorsed: Filed January 5, 1886. A. C. Emerson, clerk.

Order Overruling Motion for New Trial.

(Title of court and cause.)

This cause came regularly on to be heard this day, upon the motion of said defendant for a new trial of this cause, for the reasons and on the grounds as in said motion stated.

The said motion being submitted to the court for decision and determination, and the court now here being fully advised in the premises, it is ordered by the court that said motion for a new trial herein be, and the same is hereby, overruled and denied.

To which ruling of the court said defendant duly excepts.

ORLANDO W. POWERS, *Judge.*

In open court, Saturday, January 16, A. D. 1886.

Judgments on Indictments Nos. 741, 742, 743 *for Offences of the Years* 1883, 1885, *and* 1884 *Respectively.*

(Title of court and cause.)

The defendant and his counsel, F. S. Richards and C. C. Richards, Esqrs. (*of counsel*), came into court. The defendant was duly informed of the nature of the indictments found against him on the 5th
8 day of December, A. D. 1885, by the grand jury of this court for the crime of unlawful cohabitation committed as stated in said indictments and during the time as follows, viz: Indictment No. 741 between the first day of January, A. D. 1883, and the thirty-first day of December, A. D. 1883; indictment No. 742 between the first day of January, A. D. 1885, and the first day of December, A. D. 1885; indictment No. 743 between the first day of January, A. D. 1884, and the thirty-first day of December, A. D. 1884; of his arraignment and plea of not guilty, as charged in said three indictments, on the sixteenth day of December, A. D. 1885; of his trial and the verdicts of the juries; indictment No. 742, "Guilty as charged in the indictment," on December 31, 1885; indictment No. 742, "Guilty as charged in the indictment," on January 5, 1886; indictment No. 741, "Guilty as charged in the indictment," on January 5, 1886.

The said defendant was then asked if he had any legal cause to show why judgment should not be pronounced against him, to which he replied that he had none. And no sufficient cause being shown or appearing to the court thereupon the court renders its judgment: That whereas said Lorenzo Snow having been duly convicted in this court of the crime of unlawful cohabitation:

It is ordered, adjudged, and decreed that said Lorenzo Snow be imprisoned in the penitentiary of the Territory of Utah for a period of six months, and that he do forfeit and pay to the United States a fine of three hundred dollars and the costs of this prosecution, and that he do stand committed into the custody of the U. S. marshal for said Territory until such fine and costs be paid in full. (As to indictment No. 741.)

And it is further ordered, adjudged, and decreed that at the expiration of the sentence and judgment rendered on said indictment No. 741 said Lorenzo Snow be imprisoned in the penitentiary of Utah Territory for a period of six months, and that he do forfeit and pay to the United States the sum of three hundred dollars and
9 the costs of this prosecution, and that he do stand committed into the custody of the U. S. marshal for said Territory until such fine and costs be paid in full. (As to indictment No. 742.)

And it is further ordered, adjudged, and decreed that at the expiration of the sentence and judgment as last above rendered on said indictment No. 742 said Lorenzo Snow be imprisoned in the penitentiary of Utah Territory for a period of six months, and that he do forfeit and pay to the United States the sum of three hundred dollars and the costs of this prosecution, and that he do stand committed

into the custody of the U. S. marshal for said Territory until such fine and costs be paid in full. (As to indictment No. 743.)

The said defendant, Lorenzo Snow, is remanded into the custody of the United States marshal for Utah Territory, to be by him delivered into the custody of the warden or other proper officer in charge of said penitentiary. And said warden or other proper officer of said penitentiary is hereby commanded to receive of and from the said United States marshal him, the said Lorenzo Snow, convicted and sentenced as aforesaid, and him, the said Lorenzo Snow, keep and imprison in said penitentiary for the periods as in this judgment ordered and specified.

Counsel for said defendant moves the court that as said defendant has filed in this court a notice of appeal to the supreme court of Utah Territory from the order overruling defendant's motion for a new trial and from the judgment of this court made and entered, this defendant be admitted to bail pending such appeal and the hearing thereof in said supreme court. Whereupon the court orders that said defendant be admitted to bail in each of said cases, in the sum of five thousand dollars in each case, with two good and sufficient sureties.

And on motion of said defendant's counsel it is ordered that said defendant have ten days additional time to prepare, file, and serve bills of exceptions in each case.

ORLANDO W. POWERS, *Judge.*

10 In open court, Saturday, January 16, A. D. 1886.

Notice of Appeal.

(Title of court and cause.)

Please take notice that the said Lorenzo Snow, the appellant herein, appeals to the supreme court of Utah Territory from the order of the court overruling the motion for a new trial on the indictment for 1885, made on the sixteenth day of January, 1886; also from the final judgment rendered herein against the appellant on said sixteenth day of January, 1886.

Dated January 16, 1886.

F. S. RICHARDS AND
BENNETT, HARKNESS & KIRKPATRICK,
Attorneys for Appellant.

Endorsed: No. 742. Filed January 16, 1886. A. C. Emerson, clerk.

I hereby accept service of a copy of the within notice this 16th day of January, 1886. V. Bierbower, asst. U. S. district att'y.

Appeal Bond.

TERRITORY OF UTAH, } *ss:*
County of Weber, }

An indictment, No. 742, having been found on the fifth day of

December, A. D. 1885, in the district court of the first judicial district of Utah Territory, charging Lorenzo Snow with the crime of unlawful cohabitation, and he having been heretofore convicted and this day sentenced on said charge, and having appealed to the supreme court of Utah Territory, and by order of said dis-
11 trict court having been admitted to bail in the sum of five thousand dollars, we, David H. Peery and Hyrum S. Young, both residents and householders in the Territory of Utah, do hereby undertake that the above-named Lorenzo Snow will appear and answer the charge above named, in whatever court the same may be prosecuted, and will at all times hold himself amenable to the orders and process of this court, and, if the judgment of said district court shall be affirmed, will appear and render himself in execution of judgment, or, if he fail to perform either of these conditions, we will pay to the United States the sum of five thousand dollars.

LORENZO SNOW. [SEAL.]
D. H. PEERY. [SEAL.]
H. S. YOUNG. [SEAL.]

Acknowledged before and approved by me this 16th day of January, A. D. 1886.

[SEAL.] A. C. EMERSON, *Clerk.*

TERRITORY OF UTAH, }
County of Weber, } ss:

David H. Peery and Hyrum S. Young being duly sworn, each for himself says that he is a resident and householder in the Territory of Utah, and is worth the sum of five thousand dollars, the amount specified in the foregoing undertaking as the penalty thereof, over and above all his just debts and liabilities, exclusive of property exempt from execution.

D. H. PEERY.
H. S. YOUNG.

Subscribed and sworn to before me this 16th of January, A. D. 1886.

A. C. EMERSON, *Clerk.*

Endorsed: No. 742. Approved and filed January 16, 1886. A. C. Emerson, clerk.

12 *Bill of Exceptions.*

(Title of court and cause.)

This case came on for trial before the court and a jury duly impanneled and sworn on the 30th day of December, 1885.

The defendant, by his counsel, admitted before the court and jury that he had been married to all the women named in the indictment, the last marriage being in 1871, and that he never was divorced from either, and ever since the respective marriages has claimed each of

said women as his wife, but he did not admit that he had cohabited with more than one of them during any part of the time charged in the indictment.

HARRIET SNOW, a witness sworn for the prosecution, testified:

"My name is Harriet Snow. I was married to Lorenzo Snow in Nauvoo in 1846, and I have never been divorced from him."

Q. "How long have you lived together?"

Objected to by defendant's counsel on the ground that the question should be confined to the year 1885, as there were in this court two other separate indictments, found at the same time as the one upon which the defendant is now on trial, one for cohabiting with the same women during 1884 and one for cohabiting with the same women during 1883, and that the court had previously held that such separate indictments might be found; and counsel offered to produce these indictments in evidence in support of the objection if the court should be of the opinion that judicial notice of them could not be taken.

The court ruled that it would take judicial notice of the other indictments covering 1883 and 1884, and of the prior ruling of the court in respect to them, and overruled the objection, holding in substance that the relations between the women named in the indictment and defendant prior to 1885 might be shown for the purpose of throwing light upon their conduct during the time named in the indictment.

The defendant, by counsel, excepted to the ruling.

The court also announced that evidence of this kind might be deemed taken under defendant's objection and exception without repeating the objection.

WITNESS: "I am not living with Mr. Snow as husband and wife. I have in former days. I don't know as I could tell how long we lived together. We ceased living together long before the Edmunds law was passed. I can't tell how long before; I haven't the 13 dates. My maiden name was Squire. I have three living children by the marriage. I am now living in my own house and am mistress of it and preside there. I am not living alone. I have a stepson residing with me. His mother died and left him to me, and I raised him from a child. I have been living this way by myself a good many years. I lived so before the brick house was built. The order of the marriages is: first, Adeline, who is one of two ladies he married at the same time; Charlotte, the other one, is dead; then comes Sarah, then myself, then Eleanor, then Mary, then Phœbe, and the last is Minnie. There was one more, Caroline, who is dead. Mr. Snow lived in one wing of the old homestead before he moved to the brick house, and Minnie lived with him. The old homestead has four wings, and before the removal Sarah, Eleanor, myself, and Minnie lived there. There is a roof on each wing, but they are owned by separate individuals. It was one large house with four wings. Mr. Snow did not live with me; he lived with Minnie in one wing of the house. I was married to Mr. Snow forty

years ago this month, and he is the father of my children, and I am not a widow lady. I live in my own house. He provided it for me and arranged where I might draw my support, and it has always been so and continued up to December, 1885. He has visited me a few times at my house in 1885, sometimes for a few minutes, to inquire about the children and ask about their welfare. I could not tell how often, but he visits me."

Q. "What difference, if any, is there in your relations between yourself and Mr. Snow from the 1st of January to the 1st of December, 1885, and your relations with him six years ago?"

Objected to by defendant. Objection overruled and defendant excepted.

A. "A good deal of difference. In my younger days I lived with him as a wife and raised him children. Now I am an old lady, and I do not consider the relations that were binding on me in my younger days are so now, and I do not live with him in the same way."

Q. "The only difference, then, between your past mode of living and your present is in not being so much in his company?"

Objected to by defendant as incompetent, argumentative, and misleading to the witness. Objection overruled and defendant excepted.

A. "I stated that there was a good deal of difference. He does not live with me now—not in the same house. He has not dined with me in 1885; he has his own place to board. I think I stated before the grand jury that he had dined with me in 1885, but when I come to examine I find he was not there at the time sup-
14 posed, but was absent. I might have stated before the grand jury that he had not dined with me unless he was invited, and I have not invited him there this year. He has been away a good deal in 1885—a good part of the year. I think he went some time in May and returned about fall. I did not see him until after he was taken. I think he was away most of the time. I have no recollection of him introducing me as his wife during the past year. I was in the marshal's office about the 21st of November, 1885, with other ladies, waiting to be called before the United States commissioner at the examination. Mr. Snow introduced me to Brother Peery, and he said: 'Harriet, this is Brother Peery,' and I shook hands with him. That is all I could hear of it. I did not understand that he introduced me as his wife. My attention was called to this matter in the grand jury room."

Q. "State how you testified before the grand jury."

Objected to by defendant on the ground that, while the attention of the witness may be called to her former testimony to refresh her memory, she cannot be asked to testify here as to what she said there. Objection overruled and defendant excepted.

A. "I did not state that he introduced me as his wife. If I did

I did not so understand it. I said he introduced Brother Peery to me, but as to the form I knew nothing further."

Cross-examined:

"Since the first of January, 1885, I have lived on the same block which Mr. Snow lives on, on Main street. I live on one corner and he lives on the opposite corner. Frank Snow lives with me. He is the son of Caroline, who is dead. I occupy five rooms in the wing I live in. Mr. Snow has no room in the house and he does not occupy any room there. He has not eaten there during this year. He has come to the house a very few times. It has been so long I could not give the number, but not very often. He sometimes came to see Frank on business. Frank has sometimes been in the probate office, and he is engaged in merchandizing now. He would stay just a few minutes, and sit down for half a minute or half an hour maybe. I cannot state the number of times he came in 1885. He has not been in my house since last spring, and he was not in more than two or three times in 1885, during the eleven months. I always found Minnie at the brick house when I went. No mail matter directed to him comes to my house, and none of his business papers come there. His office is in the brick house."

Q. "During the time from January 1st to December 1st, 1885, has there been any sexual relations between you and Mr. Snow?"

Objected to by the prosecuting attorney. Objection sustained and defendant excepted.

"The house I live in is not a brick house; it is an adobe house. Frank Snow is in his twenty-ninth year. The length of the calls defendant made were from five, ten, or fifteen minutes to half an hour. They were in the daytime, and he has not passed a night in the house.

Redirect examination:

"I think Mr. Snow is seventy-two years old next April. I do not visit Minnie's house very often. Minnie's house is centrally located in town; it stands right across from the big Co-op. store. When he called to see me he did not visit any one else in the house that I know of. No one lives under the same roof with him except Minnie and the hired girl."

MARY SNOW, called for the prosecution, testified:

"My name is Mary Snow; my husband is Lorenzo Snow, and I was married in 1857. I live in my own house, opposite the Tabernacle in Brigham City, by myself. I have so lived eleven years or more. Previous to that time I lived in the old homestead for many years, and Sarah, Harriet, and Eleanor lived there. At that time Mr. Snow lived there. I have children by that marriage. From 1857 up to about eleven years ago I lived there. The difference in the relationship between me and my husband then and now is, I live by myself entirely alone. He calls on me as any other gentleman friend. He has called to see my family during the past year

four or five times. I believe he has been absent some time during the year. There is a great deal of difference between our relations the past year and eleven years ago. I am living alone now."

Q. "Is not that the only difference? Is it not true that he has not called as much as he used to, and is not that the only difference?"

A. "He does not call so much for the reason that he has been away from town. He does not visit me as much as he did a number of years ago."

Q. "Then the reason that he visits you less has been because he has been away a great portion of the year?"

A. "Yes, I guess so. He has been away the last year."

Cross-examined:

"The property I occupy is not on the same block with the brick house. It is about two and a half blocks distant. I think he has called four or five times in 1885. He called to see the family, and stayed from half a minute to half an hour perhaps. The visits were in the daytime. He has not passed a night in my house, and there is no room kept for him there. None of his mail matter or business papers came to my house."

Counsel for defendant here stated to the court that they desired to ask this witness, and each of the women named in the indictment who should be called, the question propounded to the first witness as to whether any sexual relations existed between the defendant and witness in 1885, for the purpose of saving the question. The court declined to permit the question on the ground that the Supreme Courts of Utah and of the United States had held it immaterial, but stated that defendant should have the benefit of the exception in the record, as fully as if the question had been asked of each witness. Objected to. The objection sustained and exception taken by the defendant.

WITNESS: "I think the defendant has not eaten in my house in the year 1885."

Redirect:

"In these visits and in all our intercourse we recognized each other as husband and wife just as much to-day as ever.

ELEANOR SNOW, called for the prosecution, testified:

"My husband is Lorenzo Snow, and I was married to him about thirty-five years ago, in Nauvoo. I have children. I reside in the old homestead in company with Harriet and Sarah. Mary lives alone, and Adeline lives about three blocks to half a mile from our place. Phœbe lives in different compartments of the same house with Adeline. I have been living where I do now about twenty years, I guess. Mr. Snow lives across the block, and has lived there about four years, I guess. Previous to that he lived in the old homestead, in the same house with me and Sarah and Harriet. Adeline and Phœbe moved; I don't remember how long since. We have not all lived in one house since; there were so many of us

In 1885 Mr. Snow has called to see me for a few minutes no more than two or three times. He has been away a good deal of the time—as near as I can fix it seven months. Before he went away he called merely for a few minutes. In his intercourse with me I do not know what relationship he exhibited toward me. It is not as husband and wife; I live by myself. I guess I recognized him as my husband and he me as a wife during 1885; I don't know. The difference in our relationship the past year and formerly is, he does not live at my place. I guess the only difference is that he is not in my company so much; you understand. He has not dined with me during the past year. Previous to that he had dined and visited with me once in a while. When he dined with me it was with me and my children unless there was company that had
17 been invited as company to these family gatherings. Mr. Snow occupies the position as head of the family, and occupies the head of the table when he is there. He does that at any of his friends or neighbors; they all put him at the head of the table.

Cross-examined:

"I have three children living with me; their ages are 22, 19, and 15 years. I occupy six rooms. There is no room kept for Mr. Snow; none of his mail or business papers come to the house. I think he has called about three times during this year, but he has not dined there. He would stop from ten to fifteen minutes. I live in what is called the old homestead. He called at the house to enquire about the children and folks, and would stay from ten to fifteen minutes. Sometimes he would sit down, but he is generally in a hurry. He has not passed a night in the house or slept there."

SARAH SNOW, called for the prosecution, testified:

"I am the wife of Lorenzo Snow, and have been married nearly forty years, and I have grown children. I live at the old homestead on Main street, in company with Harriet and Eleanor, and we live by ourselves with our children. I have been living there nearly thirty years. Five years ago Minnie lived in one wing of the old homestead, and Mr. Snow lived with Minnie part of the time and boarded with her. Up to the time Minnie came there to live he boarded with me, about ten years ago. I lived with him from the time I was married up to about ten years ago; then I had a place by myself. I have never been divorced. He has not introduced me as his wife for the last ten years as I can remember, but there has been no less the relation of husband and wife. He has supported me, and our social intercourse is friendly. He calls now occasionally."

Q. "What difference, if any, is there in the relation between you and your husband the past year and the relations of ten years ago?"

A. "Well, about the same, only he has not seen me, has not called. I have been away myself."

Q. "State if he calls less frequently each year as he grows older."

A. "Yes, sir."

Q. "State if it is not about the only difference in your relations in living that he does not call to see you as often as he did formerly."

A. "Well, sometimes he calls and sometimes he don't call. I do not see him as much as I did five years ago, for he lived right there five years ago. He does not visit me as much as he did when he boarded with me. Five years ago he lived right there next
18 door. I recollect being here at the preliminary examination and being introduced to Brother Peery. I cannot say how it was done. I sat in the marshal's office, but I did not notice how. I could not state to save my life."

Cross-examined:

"I occupy, with my family, ten or twelve rooms. I have five children in all, two living at home with me, the youngest 22 and the other 29. I live in the old homestead. When Mr. Snow goes home he passes by the door; that is one way to go through the lot. He has been in my house in 1885 perhaps two or three times. I went away in the spring, and he has been away six or seven months. I went to Salt Lake in the spring—I believe the second of April. I think he has called perhaps two or three times. He would remain perhaps half an hour. He might have stayed an hour. It would be during the day. I could not state the time. He has not remained or been there during the night and never slept in the house since he moved to the brick house. There is no room kept for him. None of his business papers or mail comes to the house. When he would come at the times I have mentioned in 1885 he would generally be busy with Alviras, my son, who is 22 years old, and engaged at the Co-op. The Co-op. is under the management of the defendant. He generally would be busy with Alviras. Sometimes his calls of late were principally with Alviras. He would enquire how we were getting along—if we were getting along all right. He has not eaten in my house during the year 1885."

MINNIE SNOW, called for the prosecution, testified:

"I was married to Lorenzo Snow in June, 1871, and I have four children; the oldest is ten years and the youngest three months. I live in the brick house, in Brigham City, Box Elder county, Utah Territory. My husband, Lorenzo Snow, my children, and my hired girl live with me. Mr. Snow has lived with me during the past year when he has been at home. He has been absent I think about seven months. He went away about May and returned the middle of November. I suppose he had been living there in November about a week when he was arrested in the house. I have lived with him since I was married. Previous to the present residence we lived in the old homestead, and my husband lived with me; that is all. It is one house with different apartments. The ladies that have been mentioned lived in the other compartments; they owned other portions of the house. I lived in the old homestead, the same as I live now. There is no difference in the relations between me and my husband ten years ago and now."

19 Cross-examined:

"During 1885, when Mr. Snow has been in the city, he has taken

his meals at my house and slept there, and has not been absent any night unless he was absent from town. He has taken his meals at the brick house with me and my family. He has an office in the brick house where I live. No other person occupies the brick house except myself and family—me, Mr. Snow, the children, and hired girl. All his mail matter and business papers come to that house—the brick house. He made his home with me at that house when he was in town, exclusively. When he goes to church it is from my home. I know all the other ladies who have testified. They are his wives. When he was away from home they were always at home, and I saw them almost daily. He did not go to the houses of any of these others that I am aware of."

Redirect:

"When he is in town I know that he always sleeps at my house I do not knew where he sleeps when he is not in town. I have never seen any one go to church with him but me. I have never seen him go with any of the other wives. I have seen him with the other wives, but others have been with them on the streets; never alone. I have not seen him at the houses of the other wives in 1885, and he has not been there, so far as I know. He could not have been at either of the houses all night, because I have charge of his bedroom, and I know he is always present at night when he is in town. I think he is seventy-two years old. He has not to my knowledge publicly claimed these other women as his wives. He has never spoken to me of them as his wives, to my knowledge. Certainly they are his wives, and it was so understood in the family during the past year."

Recross-examined:

"I have charge of his clothing and the preparation he makes when he leaves town. He usually takes the train, and I take him to the depot."

Dr. J. B. CARRINGTON, a witness for the prosecution, testified:

"I reside, and have during 1885 resided. in Brigham City, and I am somewhat acquainted with Lorenzo Snow. I am acquainted with a portion of his wives. I know some of them. I am not the family physician, but have been called into the family. I have known Mr. Snow about two years, and have seen him frequently during the past year; saw him in Brigham City and at the Co-op. store. I suppose Adeline lives in what is called the Cotton Thomas house. In 1885 I saw defendant in company with Sarah. I think I have seen him out riding with Sarah and Minnie. I took it to be Aunt Sarah I saw in the carriage. There was some one else with him, but I do could not see who. I know Minnie, but I do not think it was she. I think Aunt Harriet was in the carriage."

Q. "State if, in 1885, you heard defendant preach in the Tabernacle on the subject of plural marriage."

Objected to by defendant. Objection overruled and defendant excepted.

A. "I think I have."

This witness also stated that in February or March, 1885, he saw defendant and Sarah sitting together in the theatre, in the part of the house usually occupied by the Snow family, and that he supposed they were there in company.

Cross-examination:

"I have seen him in the brick house in 1885. The house where Aunt Sarah lives is called the old homestead, and is a large house with several wings, nearly on the corner of the block. In 1885 I did not see him in any of the houses, but saw him go in through the gate in front of the old homestead, and come out through the same gate several times, but did not see him go into the house. I have seen him in the yard and saw him go in and come out of the gate probably three or four times. I do not know what made him go through that gate. I think it was in March that I saw him out riding with Sarah and Harriet. I know them and can recognize them here. I saw him once in the theatre with Sarah, in the evening, some time in February. I did not see him go in. He was inside when I saw him. I don't recollect seeing any other lady with him except Sarah. I saw him go away, and when the people left he and she got up and went out, and I thought they went out together. They did not lock arms, but appeared to go out together."

Mrs. LORENZO SNOW, Jr., a witness for the prosecution, testified:

"I know defendant, who has been mentioned as the Apostle, and I know these ladies as his wives. I am the wife of Lorenzo Snow, Jr., and he is a son of Apostle Snow. I live in Brigham City, two blocks south of the Co-op., in a house with my husband. I visit around among these ladies, but not much in 1885. The defendant has been away during the year. It was about spring when he left, and he has been home probably about two weeks this winter.
21 He had been away six or seven months. I have not met him anywhere in 1885. I have seen him at my house, nowhere else, and I met him at my house the fore part of the year. I have met him during the past ten years at the house of some of these ladies—frequently at my sister Minnie's, and I think I have seen him within the past few years at Sarah Snow's. I have not seen him within the past few years at either of the other houses."

(The court here directed all the testimony of this witness relating to prior years to be stricken out.)

JOHN F. OLSON, a witness for the prosecution, testified:

"I live in Brigham City, and work for Brother Lorenzo Snow—milk cows, chop wood, etc. I live in my own house. I carry flour, coal, etc., to the houses of the wives, and supplies generally. Mr. Snow stays at the brick house. I have seen him walking to the big adobe house. He does not live there; saw him go up to the adobe

house last spring. He went away in March. I may have seen him walking to the adobe house twice. I don't know where he went. He went up to the house. The ladies have driven out themselves, and he told me to drive them out. Two went riding together. Sometimes they drive themselves, and sometimes I drive."

Cross-examined:

"I don't know that I have seen Mr. Snow go into the adobe house in 1885; I cannot remember that. I saw him go there in 1884 three times."

FRANKLIN H. SNOW, a witness for the prosecution, testified:

"I live in Brigham City, in the old homestead. I know Lorenzo Snow, and I suppose he lives at the brick house most all the time. I cannot say where he lives the rest of the time. He is generally off on business a good deal, and I cannot say where he lives when he is away from the brick house. I have seen him at the big house. He only sleeps at the brick house. I have seen him at the old homestead this year. I have seen him at my mother's, Harriet Snow's, once or twice early in the spring, but not since he returned in the fall. It might have been eight months ago—something like that. He called and remained a short time. I haven't seen him there but two or three times at the most the past year. Sarah and Eleanor also live in the old homestead. I have not seen him call on either of them the past year. I can't be positive, but I think I have seen him going to the meeting-house with mother. In going to the meeting-house he sometimes rides and sometimes walks. I have not seen him with either of the other wives this year. I was in the marshal's office waiting to be examined as a witness at the examination
22 before the commissioner, and remember an introduction to Mr. Peery. Defendant introduced Harriet and Sarah as his wives to Mr. Peery, while I was waiting to be called as a witness, about the 21st of November, 1885."

Cross-examined:

"The words of the introduction were, 'Mr. Peery, this is my wife Harriet;' 'Mr. Peery, this is my wife Sarah.' Saw him at my mother's two or three times at the outside in 1885. One occasion was when there was a sociable there and a number of people present. This is one of the occasions I referred to in my direct testimony. I have no distinct recollection in regard to any other occasion. He just called in, sometimes to see me on business or something of that sort. I am at present engaged in merchandizing, and he has called at the house sometimes to see about that. I have known him to call at other times than the evening the crowd was there. I know he did not stay there all night. I have not, in 1885, seen him driving with any wife except Minnie, who lives in the brick house. The old homestead is sixty or seventy yards from the brick house. In going from the brick house to the Tabernacle or business part of the town he sometimes goes right through the lot to the front gate, but mostly through by the old homestead, and then at other times goes around

the block. This gate is right on the road in front of the old homestead, about the centre of the building in front on the street. In going to the Tabernacle and that part of the town from the brick house the ordinary way is through that gate and past the adobe house. The gate is about twenty feet from the house. It was quite common to go in and out of that gate on his way to and from the brick house."

DAVID H. PEERY, a witness for the prosecution, testified:

"I know the defendant, and was introduced to two of his wives in the marshal's office. I do not remember the form of the introduction; we shook hands. He always spoke of these ladies as his wives, and I thought he had three or four, but have since learned there are seven. I understand that from him. Ogden, where the preliminary examination was held, is about twenty miles from Brigham City."

Miss EMMA JOSEPHSON, a witness for the prosecution, testified:

"I have lived in Brigham City ever since I can remember until I came to Ogden last March. I lived in Brigham City with Mr. Keck, three blocks north of the post office, and before coming here in March I lived at Mr. Allen's. I know defendant and some
23 of the women who appeared here as wives. I have worked for Harriet, Adeline, and Sarah three years. I worked for Harriet a year ago last July. I have seen defendant in Brigham City in 1885 in a carriage with Minnie; I don't think at any other time. I have seen him pass the old homestead, but never in the house. I don't think I have seen him at any other place during the time you speak of. I last saw him at the old homestead—some time last winter—since the 1st of January. He was alone, going out through the gate, which is eight or ten yards from the house and directly in front of it."

Cross-examined:

"This is a gate on the road to the brick house, and I have seen persons going in and coming out through that gate on the way to the brick house. The gate is on the street, and in going from the brick house to the south part of the town they go through that gate."

LUCIUS A. SNOW, a witness for the prosecution, testified:

"I am a son of Lorenzo Snow, and Harriet is my mother. I live about two miles north of Brigham City on the main road. I have seen defendant in Brigham City in 1885. I cannot remember that I have seen him anywhere except on the street. I heard him introduce my mother and Sarah to Mr. Peery, in the marshal's office. They were subpœnaed here before the United States commissioner. He said, 'Brother Peery, this is Sarah, my wife.' 'Brother Peery, this is Harriet, my wife.'"

OSCAR VANDERCOOK, a witness for the prosecution, testified:

"I am a United States deputy marshal, and had charge of the

party that arrested the defendant for unlawful cohabitation, on the 20th of November, 1885, in Brigham City, in his house, in the central part of the city. There was a little trap door underneath the carpet, and under that door a little apartment, perhaps four feet high by eight feet square, and back of that there was another apartment, and it was in that we found him. Previous to finding him we called on him to give himself up. We had reason to believe he was there, and when we came to the door of the apartment where he was found we asked him to come out, but he did not come until we called twice, and made preparations to break down the door as a last resort. I had made inquiries of Minnie Snow before discovering the trap door as to whether he was there. We had previously made a thorough search of the house from garret to cellar,
24 going through it room by room. I saw perhaps thirteen rooms. I think Minnie Snow was with us most of the time. She did not point out where he was. We noticed the carpet was ripped, and underneath it found this trap door. When I called to him to come out the second time he says, 'All right, I am coming out;' and when he came out he says, 'That is all right, boys; you have done your duty; come and take a drink with me,' or something to that effect."

Cross-examined:

"This was in the brick house just opposite the Co-op."

C. J. COREY, a witness for the prosecution, testified:

This witness produced a diagram of the premises, and explained it to the jury, showing in substance that the brick house is on the north end of the block, opposite the Co-op. store, and on an east and west street, passing along the north end of the block.

The old homestead is on the east side of the same block, fronting east on a north and south street, and the Tabernacle is further south on the same street. The block was fenced around, some parts of it with a high stone wall about seven feet high. Between the brick house and the old homestead is a fence with a gate, and by passing through this gate persons can go from one house to the other without coming out on either street. Each house has a gate in front, and to go from one house to the other by the street one would pass around the northeast corner of the block. The witness also testified that a person standing either on the street in front of the brick house or on the street in front of the old homestead, while he could see the house he was in front of, could not see the ground between the houses on the account of outside and inside fences he described. Plat put in evidence.

Cross-examined:

"I made the diagram at our store in this city, where I live. It is made from recollection and is not drawn on any exact scale. I lived in Brigham City between seven and eight years and left there in February, 1883. I observed the premises last spring, in March or

April, in passing by. I took more notice of these places than of others."

Venue was proved as laid in the indictment.

Prosecution then rested.

SARAH SNOW, a witness for defendant, testified:

There is in Brigham City a court-house hall used as a theatre. I have sometimes gone there, but only two or three times in the last two years. I did not go to the theatre in March or April, 1885, with Mr. Snow, or return from there in his company. I was in the theatre, but I was at one end of the house and he at the other end. I am hard of hearing, and when I go sit in a chair in the aisle in front of the stage. I have not sat back in the high seats with the family for two years. During the year 1885 I have not gone with defendant to the theatre or sat with him there. The stage is at one end of the building, and the seats where Mr. Snow sits are at the other end. From where I sit to where he sits is as far as across this court room. I do not remember of seeing Mr. Snow at the theatre in 1885. I do not remember of riding out with Mr. Snow and Harriet in February or March, 1885. I did not do so at any time in 1885. Olsen, the hired man, drives the carriage."

Cross-examined:

"I did not sit with the family in the theatre. The family sit on the high seats in the back part of the house, and the stage is at the other end. I believe the family sit in chairs, and no one else sits in those high seats; all the family sits there; they have seats reserved. This row of seats is reserved for the apostle's family. I haven't attended the theatre but once in 1885. I cannot tell who was there at that time; I take my seat and do not see the others. Mr. Snow hardly ever attends the theatre now. I have not seen him there in 1885. The ladies and their children occupy the seats reserved for the family."

Redirect:

"There are high seats for all the people that are willing to pay for reserving them. The high seats are higher priced, and lots [of] others occupy the chairs beside the family."

Recross-examination:

"The family, which includes the wives and children, usually occupy these chairs."

P. F. MADSEN, a witness for defendant, testified:

"I have lived in Brigham City over twenty-five years. I am at present probate judge of Box Elder county, and I have been recorder of deeds; my office is in the court-house. I live one block north of the brick house, and in going to the court-house I passed within half the width of a street of the brick house. In going to the court-house I pass on East and West streets in front of the brick house, and at the corner of the block come to Main street, which runs north

and south, and often pass south down this street in front of the old homestead. I have known Mr. Snow ever since I went to Brigham City. I have business connections with him, and see him
26 quite frequently; sometimes call to see him at the brick house since he moved his residence there. I find him there when he is in town. I know where the old homestead and the two other houses, one of which is known as the Cotton Thomas house, are. I have never found him at any of these other houses in 1885—no other house than the brick house. I cannot say how frequently I have called, but my business was such that I had occasion to call more frequently than most people. I could not say whether it would be once a week or once in two weeks. I have not found him at any of these houses, except the brick house, in 1885, and have not gone to any of the other houses to find him there. I ought to be acquainted with the premises, for I have been right around them for 25 years. I have here a plat, a rough draft, not drawn on any exact scales, but I can show you the situation approximately."

The witness here explained with the plat the situation of the premises. The location of the brick house and homestead on the plat did not differ materially from that given by the witness Corey. The witness explained that there is a path from the gate in front of the old homestead leading north of that house, and also one leading around the south and west sides of the building, and these paths unite northwesterly of the building, and thence run northerly through a gate to the brick house; that in going to or coming from the southerly part of the town, to and from the brick house, the way by this gate and path was about half a block nearer than to go around by the streets, and was quite commonly taken.

The defendant here put in deeds from the defendant to each of the wives named in the indictment, dated in 1874, and some recorded in that year, but most of them recorded in 1882, though all bore an endorsement in the handwriting of the recorder, in 1874 (since deceased), that they were filed for record in 1874. The witness identified the premises conveyed to each as the premises occupied by each for several years, and the deeds showed that the old homestead was conveyed by wings in parts to those who had severally occupied the parts conveyed. The witness also testified that on the north front of the brick house the street fence was a picket fence; that on the front of the old homestead the old wall had been torn down to within two feet of the ground and a picket fence put on top of it; that other parts of the wall built many years ago had partly fallen down, and that from the street in front of the brick house a person going from one house to the other could be seen in both lots.

Cross-examined:

27 "I am a stockholder with defendants in the Co-op. store and in the grist mill. Before defendant moved to the brick house he lived in the old homestead. There is a stone wall between the brick house premises and the old homestead premises, also on the west side of the block as far as the stable. These women are reputed to be his wives in Brigham City."

Redirect:

"The repute in Brigham City is that he has only lived with one wife since he moved to the brick house."

H. E. BOWRING, a witness for the defense, testified:

"I have lived in Brigham City nearly nine years, and I know defendant and live about two blocks from him. I pass by the brick house and adobe house generally five or six times every day. My place of business is on the northeast corner of the same block. When defendant is in town I see him almost every day and sometimes two or three times a day; sometimes see him with friends in the house, and in summer out on the lawn, sometimes in the Co-op. store and on the street, but more frequently in the house—in the brick house. I have not seem him at the old homestead in 1885. I know where Mary Snow lives. I have not seen him there in 1885. I have not seen him at the house where Adeline or Phœbe live in 1885. I think I have been at the brick house four or five times in 1885, and found defendant there."

Cross-examined:

"I think Mr. Snow has been absent the greater part of the time in 1885. It was early in the summer when he went away, and I did not see him again until November. He is superintendent of the Co-op. store and has some interest in the grist mill, and is one of the apostles of the church. He has an office in the brick house. In 1885 Sarah, Eleanor, and Harriet lived in the old homestead, and they were reputed to be Mr. Snow's wives, in 1885, in Brigham City."

Redirect:

"There was no reputes that he lived with these women, but to the contrary."

Recross-examination:

"The general repute is they are his wives and he supports them, but does not live with them."

No further or other evidence was given.

The defendant requested the court to instruct the jury as follows:

1. The defendant should be acquitted unless you find it is
28 proved by the evidence before you beyond a reasonable doubt that he has cohabited with more than one of the women named in the indictment between the last day of December, 1884, and the first day of December 1885.

2. The term "cohabit" means "live with" or "dwell with," and in the act under which the defendant is indicted it means "to live with as wives."

3. To constitute "cohabitation" there must be such a frequency or regularity and manner of association of a man and woman as to amount to a "living together," and distinguish the association from mere visits, and so long as there is not a "living together" occasional visits do not amount to cohabitation.

4. The defendant, though living with one wife, could lawfully visit another and her children at reasonable times and for lawful purposes, and the purpose of inquiring concerning the health and welfare of such other wife and his children by her, of providing for their support and the education, employment, and business of the children would be lawful. He is not required by law to break off friendly relations with any of his wives, and may attend friendly or social or religious meetings at their houses.

5. Having more than one wife and claiming and introducing more than one woman as wives do not constitute the offense charged; you must find, to justify a conviction, that he has lived with more than one within the time stated in the indictment.

6. The law assumes the defendant innocent until he is proven guilty beyond a reasonable doubt, and his guilt or innocence is to be determined by you, and what others or the public may have believed, or had reasons to believe from his manner of living, is not the issue; but you are to say from the evidence whether or not he did, in fact, live with more than one woman, as charged.

7. The defendant was not required to give any notice, public or otherwise, of his manner of life or his purposes, or whether he was or was not abstaining from cohabiting with more than one woman, and it is a sufficient defense if you find from the evidence that it is not shown, beyond a reasonable doubt, that he in fact did live or cohabit with more than one.

8. It is immaterial whether or not there was any change of conduct toward or of relations with his wives at the time of the passage of the Edmunds law, if at and prior to that time he was not violating the provisions of the act relating to cohabiting with
29 more than one woman, and if in 1885 he has not so cohabited he is innocent of the present charge, whether such innocence is the result of a change of relations with his wives or the result of a maintenance of former relations.

The court refused to give each of the foregoing instructions, severally, except such of their substance as was given in his general charge to the jury, and to the refusal to give each of said instructions asked the defendant then and there duly excepted.

The court then charged the jury as follows:

"GENTLEMEN OF THE JURY: This is a simple case. It is not one of grave importance, but is simply a prosecution for an alleged misdemeanor. You will decide this case as you would any other, simply upon the law and the evidence. The law governing the case is well settled. You are not judges of the law, and you will be governed by the charge of the court.

"The indictment charges that the defendant, on the 1st day of January, A. D. 1885, at the county of Box Elder, in this district and and Territory, and on divers other days between said 1st day of January, A. D. 1885, and the 1st day of December, A. D. 1885, did then and there unlawfully live and cohabit with more than one woman, to wit, with Adeline Snow, Sarah Snow, Harriet Snow, Eleanor Snow, Mary H. Snow, Phœbe W. Snow, and Minnie Jensen Snow, and during all the period aforesaid, at the county aforesaid,

he, the said Lorenzo Snow, did live and cohabit with all of said women as his wives. If you believe from the evidence, gentlemen of the jury, beyond a reasonable doubt, that the defendant cohabited with the women named, or any two of them, as wives, and that he held the women, or any two of them, out to the world as wives by his language or his conduct, or both, you should find him guilty.

"It is not necessary that the evidence should show that the defendant and these women, or either of them, occupied the same bed, slept in the same room, or dwelt under the same roof; neither is it necessary that the evidence should show that within the time mentioned in the indictment the defendant had sexual intercourse with either of them. The question is, were they living in the habit and repute of marriage. The offense of cohabitation is complete when a a man, to all outward appearances, is living and associating with two or more women as wives. If the conduct of the defendant has been such as to lead to the belief that the parties were living as husband and wife live, then the defendant is guilty. Of course the defendant might visit his children by the various women; he may make directions regarding their welfare; he may meet the women on terms of social equality; but if he associates with them, as a husband with his wife, he is guilty. The Edmunds law says there must be an end to the relationship previously existing between polygamists. It says that relationship must cease.

"Before you can find the defendant guilty you must be satisfied beyond a reasonable doubt that he has cohabited with two or more of the women named during the time or a portion of the time named in the indictment, to wit, between the first day of January, 1885, and the first day of December, 1885. The evidence introduced as to what occurred prior to the time named in the indictment is before you for your consideration, as tending to throw light upon the relations of the parties within the time charged. If there is evidence that the defendant had married the women, had been living with them as his wives before the offense, it may be considered by the jury as adding weight to any circumstances proven, pointing to unlawful cohabitation during the time the offense is charged.

"The law presumes the defendant innocent until proven guilty beyond a reasonable doubt. A reasonable doubt is a doubt which has some reason for its basis; it does not mean a doubt from mere caprice or groundless conjecture; it is such a doubt as a jury are able to give a reason for.

"If, after a careful and impartial consideration of all the evidence in the case, you can say and feel that you have an abiding conviction of the guilt of the defendant, and are fully satisfied of the truth of the charge, then you are satisfied beyond a reasonable doubt. You are the sole judges of the credibility of the witnesses, the weight of the evidence and of the facts. If you find the defendant guilty, you will say in your verdict: 'We, the jury, find the defendant guilty in the manner and form charged in the indictment.' If you find the defendant not guilty, you will say: 'We, the jury, find the defendant not guilty.'"

No other instruction were given to the jury.

The defendant then and there excepted to the charge to the judge as follows—to that portion which explains what is not necessary to the offense, in these words: "It is not necessary that the evidence should show that the defendant and these women, or either of them,
31 occupied the same bed, slept in the same room, or dwelt under the same roof; neither is it necessary that the evidence should show that within the time mentioned in the indictment the defendant had sexual intercourse with either of them."

To that portion defining the offense in these words: "The question is, Were they living in the habit and repute of marriage? The offense of cohabitation is complete when a man, to all outward appearances, is living or associating with two or more women as wives. If the conduct of the defendant has been such as to lead to the belief that the parties were living as husband and wife live, then the defendant is guilty."

Also to the following clause of the charge: "Of course the defendant might visit his children by the various women; he may make direction regarding their welfare; he may meet the women on terms of social equality; but if he associates with them as a husband with his wife he is guilty. The Edmunds law says there must be an end of the relationship previously existing between polygamists. It says that the relationship must cease."

The foregoing bill of exceptions is full and correct, and the same is hereby settled.

Dated January 20, 1885.

ORLANDO W. POWERS,
Judge First District Court.

Filed January 22, 1886.

A. C. EMERSON, *Clerk.*

We certify, and it is stipulated and agreed, that the foregoing is a full, true, and correct transcript in this case.

Dated January 22, 1886.

W. H. DICKSON,
U. S. District Attorney.
F. S. RICHARDS &
BENNETT, H. & K.,
Attorneys for Appellant.

JNO. WILLIAMS,
Of Counsel.

32 THURSDAY, *January 28th, A. D.* 1886.

* * * * * * *

THE UNITED STATES, Respondent,
vs.
LORENZO SNOW, Appellant. } From 1st Dist. No. 742.

This cause coming on regularly for hearing was argued by R. Harkness and F. S. Richards for appellant, W. H. Dickson for respondent, submitted, and taken under advisement.

SATURDAY, *February 6th, A. D.* 1886.

A session of the supreme court of Utah Territory was held this day, beginning at 10 o'clock a. m., pursuant to adjournment.

Present and presiding, the Hon. C. S. Zane, chief justice; present also the Hon. J. S. Boreman, associate justice, and the Hon. O. W. Powers, associate justice; the clerk, marshal, and members of the bar. Court was duly opened, and the record of the last session read and signed.

THE UNITED STATES, Respondent,
vs.
LORENZO SNOW, Appellant.
} From 1st Dist. No. 742.

This cause having been heretofore argued and submitted
33 and the court being sufficiently advised thereupon, it is now here considered, ordered, and adjudged that the judgment of the district court therein be, and the same is hereby, affirmed.

Thereupon, on application of counsel of appellant, it is ordered that remittitur be stayed for thirty days.

Opinion.

Supreme Court of Utah Territory. January Term, A. D. 1886.

Indictment for year 1885.

UNITED STATES *vs.* LORENZO SNOW.

ZANE, *C. J.:*

The defendant was convicted of the crime of unlawful cohabitation and sentenced to imprisonment in the penitentiary for the term of six months, and to pay a fine of three hundred dollars and the costs of the prosecution. From this judgment he has appealed to this court and insists that the evidence is insufficient to justify the verdict.

At the commencement of the trial the defendant admitted before the court and jury that he had married each of the seven women named in the indictment, had not been divorced from either, and that he claimed all of them as his wives and furnished them support.

It appears from the evidence that appellant was first married more than forty years ago in Nauvoo, Illinois, to two women, Adeline and Charlotte, at the same time and by one ceremony (the latter of the two women has since died), and that he has since married, in the order named, Sarah, Harriet, Eleanor, Mary, Phœbe, and Minnie; also, one other, Caroline (now deceased). The last marriage was in 1871. The first marriage was unlawful because the marriage with two women at the same time is void. Therefore Sarah is the lawful wife. The evidence shows and it is admitted by defendant that he has lived and cohabited with the youngest and last wife since his marriage to her and that she has four children, the youngest being three months old.

Sarah Snow, the lawful wife, was introduced as a witness without objection, and with other testimony gave the following: She married defendant about forty years ago, and now has grown children by him; she lives at the old homestead in company with Harriet and Eleanor, and has been living there nearly thirty years; five years ago Minnie lived in one wing of the old homestead, and defendant lived with her part of the time; up to the time Minnie came there defendant boarded with witness; she has never been divorced; defendant has supported her; their social intercourse has been friendly and he calls on her occasionally; he calls less frequently as he grows older. In answer to the question, "State if it is not about the only difference in your relations in living that he does not call to see you as often as he did formerly?" witness stated, "Well, sometimes he calls and sometimes he don't call. I do not see him as much as I did five years ago, for he lived right there five years ago; he does not visit me as much as he did when he boarded with me. Five years ago he lived right there next door. Witness also said on cross-examination that she has five children; that two live at home and the youngest is 22 years old; that defendant, whenever he goes home, passes by the door—that being one way to go, passing through the lot; that witness went away in the spring of 1885, and that defendant was away six or seven months; that he has called on her two or three times during 1885, and would remain perhaps half an hour; that since defendant moved to the new brick house with his last wife he has never slept in the house where witness has slept, and no room is kept for him; that when he came he would generally be busy with their son; that his calls of late were principally with their son; that he would enquire if they were getting along all right.

Harriet Snow, another wife, stated that she was married to defendant forty years ago, in December of that year; that he is the father of her children, and that she lives in her own home, which appellant provided for her, and that he arranges for her support; that he had visited her a few times during the year 1885, sometimes to enquire about the children; that she could not say how often he visited her, but he did visit her; witness was asked if there was any difference between their relations during *last* year (1885) and those of *six* years ago; to which question she answered: "A good deal; in my younger days I lived with him as a wife and raised him children. Now I am an old lady and I do not consider the relations binding upon me in my younger days to be so now. I do not live with him in the same way." Mary Snow also answered the interrogatory: "Is it not true that he has not called as much as he used to, and is not that the only difference?" in the following words: "He does not call so much for the reason that he has been away from town. He does not visit me as much as he did a number of years ago." To the further question: "Then the reason he visited you less was because he was away a great portion of the year?" she answered: "Yes, I guess so; he has been away the last year." Eleanor Snow, another polygamous wife, among other things stated: "I guess I recognized him as my husband and he me as wife

during 1885; don't know; the difference in our relationship the last year and formerly is he does not live at my place. I guess the only difference is he is not in my company so much—you understand. Previous to that, he had visited and dined with me once in a while. When he dined with me it was with me and my children, unless there was company to these family gatherings. Mr. Snow occupied the position as head of the family and occupies the head of the table when he is there; his friends all put him at the head of the table." Dr. J. B. Carrington testified that, in 1885, he saw defendant in company with Sarah—out riding with her; another woman was in the carriage—thought it was Harriet; that he also saw defendant and Sarah sitting together in the theatre, in the part of the house usually occupied by the Snow family, and that they afterwards went out together. In the city where defendant lives he and his various wives and their families appear, from the evidence, to be regarded by all as one family, and this family has a place assigned it in the theatre apart from other people; that each wife and her family are regarded as a part and portion of defendant's family—of the Snow family—and that the appellant is regarded as the head of this entire family by each member of it. In 1885 the last witness saw defendant go in and come out through the gate in front of the old homestead, where Sarah and two of his polygamous wives lived, but witness did not see him go in or come out of that house. The officer who arrested appellant testified that after he had searched defendant's house he discovered a carpet that had been ripped, and on examination found underneath the carpet a little trap door, and under that door a small apartment, and back of that another apartment, and in that apartment he found the defendant. Defendant did not come out when called, until the officer made preparation to break the door; defendant then said: "All right; I am coming out," and when he came out, he said further: "That is all right, boys; you have done your duty; come and take a drink with me."

34 It appears from the evidence that appellant boards and lodges with his last wife and visits his other wives occasionally, though not very often; that during the year 1885 he has not lodged or taken a meal with any one of the others; that he furnishes them houses to live in and supports them; that he introduces them publicly as his wives, and by his language and conduct holds them out to the world as such. The evidence proved beyond controversy that defendant cohabits with his polygamous wife, Minnie. The remaining fact to find from the evidence is, has he, at any time during the year 1885, cohabited with the other women named in the indictment or any one of them? It appears from the evidence that defendant is seventy-two years old, and has married nine wives, and that seven of those wives are still living. To the first he was married in his youth. As his passion for one wife became satiated and dulled by indulgence and gratification, and as his lust was again kindled by the appearance of a younger and fresher, or possibly a more attractive, woman, he would marry again, until his marriages have been repeated nine times, and now at the age of 72

years he is found with seven living wives—the last being comparatively young, with an infant in her arms. He furnishes homes for, supports, associates with, claims, holds out, and flaunts in the face of society all these seven women as his wives. And yet he says he cohabits with but one. The law must characterize his relation to them and his intercourse and association with them. Let us consider the case with respect to Sarah, his lawful wife.

A lawful marriage of itself affords a strong presumption of matrimonial cohabitation, because such cohabitation is in accordance with duty and usually attends such a marriage. When to this presumption are added the further inferences from the following facts—that defendant claimed Sarah all the time as his wife, and that she claims to be such; that he provides for her a home and the necessaries and comforts of life; that they were on good terms; that he took her to the theatre, out riding, visited her occasionally at her home, and was the father of her children—the conclusion removes every reasonable doubt that he cohabited with her as his wife. When they were associating together she was not his paramour or his friend simply—he then had and still has all the rights and opportunities of a husband, and she those of a wife. They were living and were together. They were living together. Under such circumstances the law will not permit them to say they were together merely as friends and not as husband and wife.

It is not essential to matrimonial cohabitation that the parties should be together all the time if their intercourse and relations are agreeable and they associate together some part of the time. In that case the law does not notice the intervals of separation. Owing to the necessities of human life and the claims of business and trade, married people are often in each other's company less for long periods than the defendant and his wife Sarah were during the year 1885, and yet they are regarded as cohabiting as man and wife. Such is often the case with mariners, traveling salesmen, and other classes of persons that could be mentioned; they associate at long intervals and are regarded as cohabiting.

The third section of the act of Congress of March 22nd, 1882 was intended to reach such conduct as the evidence proves the defendant guilty of—"If any male person * * * cohabits with more than one woman he shall be deemed guilty of a misdemeanor," etc. When the entire act of which the above quotation is a part is taken and considered together in the light of the occasion and necessity of its enactment and of the evil it was intended to remedy, we are of the opinion that the term cohabit should be given a broad meaning. In construing the term regard should be had to the spirit and general intent of the act. "It is an established rule in the exposition of statutes that the intention of the lawgiver is to be deduced from a view of the whole and every part of a statute taken and compared together. When the words of a statute are not explicit the intention is to be collected from the context, from the occasion and necessity of the law, from the mischief felt, and the object and remedy in view; and the intention is to be taken or presumed according to what is consonant to reason and good dis-

cretion." This was the rule laid down by Plowden, pp. 10, 57, 205, 363, and by these maxims Chancellor Kent affirms, "The sages of the law have ever been guided in searching for the intention of the legislature," and commends them "as maxims of sound interpretation, which have been accumulated by the experience and ratified by the approbation of ages." 1 Kent Comm., 4627. Potter's Dwarris on Statutes and Constitutions, p. 196, note 13.

In construing the term cohabitation as used in the act under consideration, the Supreme Court of the United States say in the case of the United States *vs.* Cannon (not yet reported): "It is the practice of unlawful cohabitation with more than one woman that is aimed at—a cohabitation classed with polygamy and having its outward semblance. It is not on the one hand meretricious unmarital intercourse with more than one woman. General legislation as to lewd practices is left to the territorial government. Nor on the other hand does the statute pry into the intimacies of the marriage relation. But it seeks not only to punish bigamy and polygamy, when direct proof of the existence of those relations can be made, but to prevent a man from flaunting in the face of the world the ostentation and opportunities of a bigamous household with all the outward appearances of the continuance of the same relations which existed before the act was passed, and without reference to what may occur in the privacy of those relations."

This court, speaking by Boreman, J., said: "What then was the object of the Congress in enacting this statute? It was, judging from the whole act, intended to be an aid in breaking up polygamy and the pretense thereof." Pacific Reporter, Vol. 7, No. 7, p. 374. The opinion of this court in case of United States *vs.* Musser (*Ibid.* p. 391) is to the same effect: "It appears plain that the intention was to protect the monogamous marriage by prohibiting all other marriages, either in form or in appearance only, whether evidenced by a ceremony or by conduct and circumstances alone. * * * * The end of the law was the protection of the monogamous marriage, and the suppression of polygamy and unlawful cohabitation were but means to that end. It is proper also to take into consideration the conditions as the National Legislature anticipated and understood them —in which the law was to be applied and enforced. They knew the time had elapsed within which a very large portion of those living in polygamy could be punished for that offense, and that many of these were among the most influential men in society, being the heads of the church, and that the example of their continuing to live with their plural wives under a claim of divine right would be a scandal to society and a menace to the lawful marriage; that such examples would be a continuing invitation and an apparent justification for their followers, either secretly or openly, to violate the law. Congress therefore forbade plural marriage in appearance only, as well as in form, and by the example of punishment it doubtless intended to eradicate the example of apparent plural marriages, as well as the plural marriage in form."

The evidence against the defendant shows one of the most aggravated cases and worst examples of polygamy. He has one lawful

and six plural wives living, and all of them he maintains and publicly acknowledges by introducing them as such, but claims that he is cohabiting with but one and visiting the others when he pleases. We are of the opinion that the evidence was sufficient to justify the verdict.

The defendant excepted to certain parts of the charge given in the lower court, and assigns the giving thereof to the jury as error. The charge appears to have been an oral one and does not consist of separate instructions. Each part of it should be regarded as qualified by the other portions. If the paragraphs excepted to were not misleading when so considered, they should not be regarded as erroneous. The portion first excepted to is, "It is not necessary that the evidence should show that the defendant and these women, or either of them, occupied the same bed, slept in the same room, or dwelt under the same roof; neither is it necessary that the evidence should show that within the time mentioned in the indictment the defendant had sexual intercourse with either of them." This was a statement of facts not necessary to be shown by the evidence and was immediately followed by a statement of essential facts as follows: "The question is, were they living in the habit and repute of marriage? The offense of cohabitation is complete when a man to all outward appearances is living and associating with two or more women as wives." When the portion of the charge objected to is taken with that which immediately followed, the jury must have understood that if the defendant and any two of his wives were living in the habit and repute of marriage, and to all outward appearance they were living and associating together as man and wife, it was not necessary to show that they occupied the same bed, slept in the same room, dwelt under the same roof, or that they were guilty of sexual intercourse.

The jury must have understood that it was necessary for them to believe from the evidence that the defendant and at least two of his wives lived and associated together as man and wife to all outward appearances, and that it was not necessary that he should board and lodge under the same roof with or have sexual intercourse with them. If they so understood they were not misled.

Counsel for appellant also assign as error the giving of the following as a part of the charge: "The question is, were they living in the habit and repute of marriage? The offense of cohabitation is complete when a man to all outward appearances is living or associating with two or more women as wives. If the conduct of the defendant has been such as to lead to the belief that the parties were living as husband and wife live, then the defendant is guilty." This paragraph must be considered with the one in which the jurors were instructed that they must be satisfied of the defendant's guilt beyond a reasonable doubt before they could convict.

35 The defendant also excepted to the following clause of the charge and assigned the giving thereof as error: "Of course the defendant might visit his children by the various women; he may make directions regarding their welfare; he may meet the women on terms of social equality; but if he associates with them

as a husband with his wife, he is guilty. The Edmunds law says there must be an end of the relationship previously existing between polygamists. It says the relationship must cease." So much of the clause as stated that defendant might visit his children, make directions regarding their welfare, and might meet his wives on terms of social equality was quite as favorable to the defendant as he could ask; and the further statement, "but if he associated with them as a husband *as a husband* with his wife he is guilty," was a rather meager statement of what had been stated more fully in the preceding part of the charge. The remark that "the Edmunds law says that there must be an end of the relationship previously existing between polygamists," and that "it says that the relationship must cease," was evidently made inadvertently. It was a disconnected affirmation, intended to be a declaration of the general intent and purpose of the law known as the Edmunds law. As a statement of the purpose of the law it was correct. That act was doubtless aimed at polygamy and intended to put an end to it. The statement could not be understood as a definition of the crime of unlawful cohabitation, and the jury could not have so understood it. That offense had been fully described in the preceding portion of the charge. We do not believe that this statement of the purpose of the law misled the jury, and therefore it is not ground for reversal.

We are of the opinion that the exceptions of the defendant to the ruling of the trial court in admitting and refusing evidence are not well taken.

The action of the court in refusing certain requests asked by the defendant is also assigned as error.

The second, third, and fifth of them related to the definition of the term cohabitation as used in the law which the defendant was charged with violating. That term was defined in the charge with sufficient clearness to enable the jury to understand its meaning in view of the evidence. In the fourth request certain conduct was mentioned that would not constitute the offence and the request was not necessary to be given.

The sixth refused was given in substance in the charge, so far as it was proper, and we are of the opinion that the seventh and eighth requests referred to matters in regard to which it was unnecessary to charge the jury. The charge as given covers all the points upon which it was necessary to instruct the jury and was quite full and substantially correct.

After a careful examination of this record we find no ground sufficient to reverse the judgment of the district court, and it is therefore affirmed.

Powers, A. J., concurs. Boreman, J., concurs.

Endorsed: Filed February 6, 1886. E. T. Sprague, clerk.

36 TERRITORY OF UTAH, } ss:
Salt Lake County, }

I, Ezra T. Sprague, clerk of the supreme court of said Territory of Utah, do hereby certify that the annexed and foregoing is a full, true, and correct copy of the record, proceedings, and opinion in and of said court in the cause therein entitled on file or of record at my office.

In testimony whereof I have hereunto set my hand and the seal of said court this 9th day of February, A. D. 1886.

[Seal Supreme Court, Territory of Utah, United States of America.]

E. T. SPRAGUE, *Clerk.*

37 *Conviction for Unlawful Cohabitation in* 1885.

Supreme Court, Territory of Utah.

UNITED STATES *vs.* LORENZO SNOW.

To the Hon. C. S. Zane, chief justice of said court:

The petition of Lorenzo Snow respectfully shows:

That in this court a final judgment was recently rendered, affirming the judgment of the district court of the first judicial district of said Territory, by which your petitioner was convicted and sentenced for the crime of unlawful cohabitation in the year 1885.

The full record of such conviction, sentence, and the judgment of affirmance in this court, duly certified by the clerk thereof, is annexed and herewith presented, and from which it will appear that your petitioner was convicted on an indictment under section 3 of chap. 47 of the laws of the United States, approved March 22d, 1882.

That in said case there was drawn in question the validity of said statute as applied to the case of your petitioner and the construction and authority thereof.

And your petitioner further shows that various errors, prejudicial to him, in the construction of said statute, and in holding the same valid as an authority for the conviction of your petitioner, intervened in said case, and he now assigns the following errors on
38 said record, to wit:

Assignment of Errors.

1st. The court erred in holding the evidence sufficient to constitute an offense under said statute.

2d. The court erred in holding the defendant could not show there had been no sexual intercourse between him and women with whom he was charged with cohabiting.

3. Court erred in sustaining the refusal to instruct the jury, as prayed by the defendant, in the following requests, separately prayed, to wit:

Defendant's second request. The term "cohabit" means "live with" or "dwell with," and in the act under which the defendant is indicted it means to live with as wives.

Defendant's third request. To constitute "cohabitation" there must be such a frequency or regularity and manner of association of a man and woman as to amount to a "living together," and distinguish the association from mere visits, and, so long as there is not a "living together," occasional visits do not amount to cohabitation.

Defendant's fourth request. The defendant, though living with one wife, could lawfully visit another and her children at reasonable times and for lawful purposes; and the purposes of inquiring concerning the health and welfare of such other wife and his children by her, of providing for their support, and the education, employment, and business of the children would be lawful. He is not required by law to break off friendly relations with any of his wives, and may attend friendly or social or religious meetings at their houses.

Defendant's fifth request. Having more than one wife and claiming and introducing more than one woman as wives do not constitute the offense charged. You must find, to justify a conviction, that he has lived with more than one within the time stated in the indictment.

Defendant's sixth request. The law assumes the defendant innocent until he is proven guilty beyond a reasonable doubt, and his guilt or innocence is to be determined by you, and what others or the public may have believed, or had reasons to believe, from his manner of living is not the issue, but you are to say from the evidence whether or not he did in fact live with more than one woman, as charged.

39 Defendant's seventh request. The defendant was not required to give any notice, public or otherwise, of his manner of life or his purposes, or whether he was or was not abstaining from cohabiting with more than one woman, and it is a sufficient defense if you find from the evidence that it is not shown, beyond a reasonable doubt, that he in fact did live or cohabit with more than one.

Defendant's eighth request. It is immaterial whether or not there was any change of conduct toward or of relations with his wives at the time of the passage of the Edmunds law, if at and prior to that time he was not violating the provisions of the act relating to cohabiting with more than one woman; and if in 1885 he has not so cohabited he is innocent of the present charge, whether such innocence is the result of a change of relations with his wives or the result of a maintenance of former relations.

4. There is error in sustaining the several clauses of the charge to the jury, to each of which clauses the defendant excepted, to wit:

(*a*.) "It is not necessary that the evidence should show that the defendant and these women, or either of them, occupied the same bed, slept in the same room, or dwelt under the same roof; neither is it necessary that the evidence should show that within the time mentioned in the indictment the defendant had sexual intercourse with either of them."

(*b*.) "The question is, were they living in the habit and repute of marriage? The offense of cohabitation is complete when a man, to

all outward appearances, is living or associating with two or more women as wives. If the conduct of the defendant has been such as to lead to the belief that the parties were living as husband and wife live, then the defendant is guilty."

(c.) "Of course the defendant might visit his children by the various women; he may make direction regarding their welfare; he may meet the women on terms of social equality; but if he associates with them as a husband with his wife, he is guilty. The Edmunds law says there must be an end of the relationship previously existing between polygamists. It says that the relationship must cease."

Wherefore your petitioner prays the allowance of a writ of error to the said court removing said case to the Supreme Court of the United States.

LORENZO SNOW,
Per F. S. RICHARDS, AND
BENNETT, HARKNESS & KIRKPATRICK,
Attorneys.

40 [Endorsed:] Case 742 Supreme court, Utah Territory. United States *vs.* Lorenzo Snow. Petition for writ of error and assignment of errors.

A writ of error herein is allowed, and a citation will be issued on filing the usual bond in the sum of two hundred and fifty dollars. Dated February 23, 1886. Charles S. Zane, chief justice sup. court of Utah.

41 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the supreme court of Utah Territory and the honorable the judges of said court, Greeting:

Because in the record and proceedings and also in the rendition of the judgment in the supreme court of the Territory of Utah, being the highest court of law and equity of the said Territory in which a decision could be had, in a certain case wherein the United States were the plaintiff and respondent and Lorenzo Snow was the defendant and appellant, wherein was drawn in question the construction, effect, and validity of a statute of the United States, manifest errors have happened, to the great damage of the said Lorenzo Snow, as by his complaint and the said judgment record appears, we, being willing that error, if any hath been, shall be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next in the Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may

42 cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, the 23d day of February, 1886.

[Seal Supreme Court, Territory of Utah, United States of America.]

E. T. SPRAGUE,
Clerk of the Supreme Court of Utah Territory.

Allowed by—

HON. C. S. ZANE,
Chief Justice of the Supreme Court of Utah.

[Endorsed:] Case 742. United States *vs.* Lorenzo Snow. Writ of error.

43 Know all men by these presents that we, James Sharp and John R. Winder, both of Salt Lake City, in the county of Salt Lake and Territory of Utah, are held and firmly bound unto the United States of America in the full and just sum of two hundred and fifty dollars, to be paid to the United States of America, their certain attorneys or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Whereas lately, at the January term of the supreme court for the Territory of Utah, in a criminal suit depending in said court between the United States and Lorenzo Snow, judgment was rendered against the said Lorenzo Snow, and he having obtained a writ of error and filed a copy thereof in the clerk's office of said court to reverse the judgment in the aforesaid suit, and a citation directed to the said United States citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next:

Now, the condition of the above obligation is such that if the said Lorenzo Snow shall prosecute his said writ to effect and answer all damages and costs if he shall fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

February 24, 1886.

JAMES SHARP. [SEAL.]
JOHN R. WINDER. [SEAL.]

44 [Endorsed:] Case 742. Lorenzo Snow, pl'ff in error, *vs.* United States, def't in error. Bond on appeal. (Copy.)

The within bond is approved. February 24, 1886. C. S. Zane, chief justice sup. c't, Utah Territory.

45 The United States of America to the United States of America, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the office of the clerk of the supreme court of Utah Territory, wherein Lorenzo Snow is the plaintiff in error and you are the defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error

mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness my hand this 24th day of February, A. D. 1886.

C. S. ZANE,
Chief Justice of the Supreme Court of Utah Territory.

46 [Endorsed:] Case 742. Lorenzo Snow, pl'ff in error, *vs.* United States, def't in error. Citation.

A copy of the within citation was personally served on me Feb'y 24, 1886. W. H. Dickson, U. S. district att'y, Utah.

47 TERRITORY OF UTAH, } *ss:*
County of Salt Lake, }

I, E. T. Sprague, clerk of the supreme court of said Territory of Utah, in obedience to the writ of error hereto attached, do return annexed hereto said writ, the petition therefor, the allowance thereof, assignment of errors, the citation thereon issued, with proof of service thereof, and a transcript of the record and proceedings, opinion, and bond on writ of error—all in and of said court, in the cause in said writ described—to the Supreme Court of the United States; and I hereby certify that said transcript of the record, proceedings, opinion, and bond is a true, full, correct, and complete copy of the several originals thereof on file or of record in my office.

In witness whereof I have hereunto set my hand and affixed the seal of said supreme court of Utah Territory, at Salt Lake City, this 24th day of February, A. D. 1886.

[Seal Supreme Court, Territory of Utah, United States of America.]

E. T. SPRAGUE, *Clerk.*

Endorsed on cover: Utah Territory supreme court. No. 1278. Lorenzo Snow, plaintiff in error, *vs.* The United States. Filed March 2, 1886.

mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness my hand this 24th day of February, A. D. 1886.

C. S. ZANE,
Chief Justice of the Supreme Court of Utah Territory.

46 [Endorsed:] Case 742. Lorenzo Snow, pl'ff in error, *vs.* United States, def't in error. Citation.

A copy of the within citation was personally served on me Feb'y 24, 1886. W. H. Dickson, U. S. district att'y, Utah.

47 TERRITORY OF UTAH, } *ss:*
County of Salt Lake, }

I, E. T. Sprague, clerk of the supreme court of said Territory of Utah, in obedience to the writ of error hereto attached, do return annexed hereto said writ, the petition therefor, the allowance thereof, assignment of errors, the citation thereon issued, with proof of service thereof, and a transcript of the record and proceedings, opinion, and bond on writ of error—all in and of said court, in the cause in said writ described—to the Supreme Court of the United States; and I hereby certify that said transcript of the record, proceedings, opinion, and bond is a true, full, correct, and complete copy of the several originals thereof on file or of record in my office.

In witness whereof I have hereunto set my hand and affixed the seal of said supreme court of Utah Territory, at Salt Lake City, this 24th day of February, A. D. 1886.

[Seal Supreme Court, Territory of Utah, United States of America.]

E. T. SPRAGUE, *Clerk.*

Endorsed on cover: Utah Territory supreme court. No. 1278. Lorenzo Snow, plaintiff in error, *vs.* The United States. Filed March 2, 1886.

118-346

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 1279.

LORENZO SNOW, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE SUPREME COURT OF THE TERRITORY OF UTAH.

FILED MARCH 2, 1886.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 1279.

LORENZO SNOW, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE SUPREME COURT OF THE TERRITORY OF UTAH.

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a *Transcript on Appeal.*

Supreme Court of Utah Territory. January Term, 1886.

UNITED STATES OF AMERICA, Respondent,
vs.
LORENZO SNOW, Appellant. } No. 743.

F. S. Richards and Bennett, Harkness & Kirkpatrick, attorneys for appellant; W. H. Dickson, U. S. dis't att'y.

Filed 25th of January, 1886.

E. T. SPRAGUE, *Clerk.*

1 *Transcript.*

UNITED STATES OF AMERICA, } *ss:*
Territory of Utah, }

Supreme Court of Utah Territory. January Term, 1886.

UNITED STATES OF AMERICA, Respondent,
vs.
LORENZO SNOW, Appellant.

Indictment.

At a stated term of the district court of the first judicial district in and for the Territory of Utah, begun and holden at the
2 city of Ogden, within and for the district and Territory aforesaid, on the sixteenth day of November, A. D. 1885, and continued by adjournment to and including the second day of December, A. D. 1885.

UNITED STATES OF AMERICA *against* LORENZO SNOW.

The grand jurors of the United States of America, within and for the district aforesaid, in the Territory aforesaid, being duly empaneled and sworn, on their oaths do find and present that Lorenzo Snow, late of said district, in the Territory aforesaid, heretofore, to wit, on the first day of January, in the year of our Lord one thousand eight hundred and eighty-four, at the county of Box Elder, in the said district, Territory aforesaid, and within the jurisdiction of this court, and on divers others days and times thereafter, and continuously between said first day of January, A. D. 1884, and the thirty-first day of December, A. D. 1884, did then and there unlawfully live and cohabit with more than one woman—with Adeline Snow, Sarah Snow, Harriet Snow, Eleanor Snow, Mary H. Snow, Phœbe W. Snow, and Minnie Jensen Snow; and during all the period aforesaid, at the county aforesaid, he, the said Lorenzo Snow, did unlawfully claim, live, and cohabit with all of said women as his wives, against the form of the statute of said United States in such case made and provided and against the peace and dignity of the same.

V. BIERBOWER,
Ass't U. S. District Att'y.
J. W. McNUTT,
Foreman of Grand Jury.

Indictment No. 743 filed in open court, properly endorsed a true bill, etc., and with the names of the witnesses, on the 5th day of December, 1885.

3 *Court Minute Entry of Arraignment.*

(Title of court and cause.)

In this action, the defendant, being in court, and upon the indictment herein being read to him, was, on motion of R. K. Williams, Esq., of counsel for said defendant, given until Monday morning next to plead thereto.

ORLANDO W. POWERS, *Judge.*

In open court Friday, December 11th, A. D. 1885.

Demurrer to Indictment.

(Title of court and cause.)

The defendant demurs to the indictment in the above entitled prosecution for the following causes:

1. Because there is no such body known to the law in Utah Territory as a grand jury of the United States, nor are there any such persons known to such law as United States grand jurors.

2. Because it does not appear in said indictment that it was found by a grand jury of said district court, nor does it appear therein that it was found by a grand jury of the first judicial district of Utah Territory, nor does it appear therein that it was found by a legally constituted grand jury.

3. Because the grand jury as set out and described in said indictment had no jurisdiction of said offense, nor has this court any jurisdiction thereof as presented by said grand jury.

4. Because the facts stated in said indictment do not constitute a public offense or violation of any law in operation in said Territory.

5. Because more than one offense is stated in the same indictment and count of the indictment in this: that said defendant is charged with cohabiting with more than one woman as his wives—

4 "on the first day of January, in the year of our Lord one thousand eight hundred and eighty-four, at the county of Box Elder, in the said district, Territory aforesaid, and within the jurisdiction of this court, and on divers other days and times thereafter and continuously between said first day of January, A. D. 1884, and the thirty-first day of December, A. D. 1884, did then and there unlawfully live and cohabit with more than one woman;" whereas the living with and cohabiting with more than one woman as his wives were not one continuous offense, but a new and distinct offense for each and every day said defendant is charged with so unlawfully living with and cohabiting with more than one woman as his wives.

6. That said defendant is therein charged with unlawfully living with and cohabiting with as his wives on the first day of January, 1884, and each and every day thereafter continuously until the thirty-first day of December, 1884, divers women, to wit: with

Adeline Snow, Sarah Snow, Harriet Snow, Eleanor Snow, Mary H. Snow, Phœbe W. Snow, and Minnie Jensen Snow; whereas the unlawful living with each and every one of said women as charged in said indictment is a separate and distinct offense, and not one single offense.

7. Because it is not stated in said indictment which of said named women is said defendant's first and legal wife, or whether either is his first and legal wife, nor who is his first and legal wife.

F. S. RICHARDS,
BENNETT, HARKNESS & KIRKPATRICK, AND
R. K. WILLIAMS,
Att'ys for Defendant.

Endorsed: No. 743. Filed December 15, 1885. A. C. Emerson, clerk. Service acknowledged December 15, 1885. V. Bierbower, ass't U. S. dis't att'y.

5 *Order Overruling Demurrer. Defendant's Plea.*

(Title of court and cause.)

This case came regularly on to be heard upon the demurrer of defendant to the indictment herein. Said demurrer was argued by counsel, R. K. Williams, for said defendant, and V. Bierbower, Esq., assistant United States attorney, for the Government, and submitted to the court for judgment and decision. And the court, now here, being fully advised in the premises, and due deliberation being thereupon had, it is ordered by the court that said demurrer be, and the same is hereby, overruled; to which order and ruling of the court the said defendant, by his said counsel, duly excepts.

Said defendant, upon being asked to plead to said indictment, pleads not guilty thereto.

ORLANDO W. POWERS, *Judge.*

In open court Wednesday, December 16, 1885.

Plea of Former Conviction and Court Minutes of Trial.

(Title of court and cause.)

This cause came regularly on for trial, the ass't U. S. district attorney, V. Bierbower, Esq., appearing for the United States, and Messrs. Bennett, Harkness & Kirkpatrick, F. S. Richards, R. K. Williams, C. C. Richards, and H. H. Rolapp, for defendant. Whereupon counsel for defendant moves the court that the defendant be allowed to enter a further plea herein, in bar of the conviction under this indictment, which being allowed by the court, said defendant enters the following oral plea:

6 And now comes the said defendant, and protesting he is not guilty of the premises charged, and by leave of court for a further plea herein saith: That the United States ought not to further prosecute the said indictment against him, the said Lorenzo

Snow, because that since his former plea herein he has been convicted of the same offense charged in this indictment, by the judgment of this court, to wit, the district court of the first judicial district of the Territory of Utah, rendered at the city of Ogden, in the county of Weber, on the thirty-first day of December, 1885—that is, on the day and at the place and in the court aforesaid he was found guilty of the same offense charged in the indictment by the verdict of a jury, which verdict is unreversed and in full force.

And for a further specification of this plea the said defendant saith that the grand jury of this court, for the November term thereof, of the year 1885, duly empaneled, charged, and sworn to enquire of offenses against the United States within the jurisdiction of this court, on the fifth day of December, 1885, presented and filed in this court, in due form, an indictment against this defendant, in words and figures following, to wit:

UNITED STATES OF AMERICA, }
Territory of Utah, } *ss:*

At a stated term of the district court of the first judicial district in and for the Territory of Utah, begun and holden at the city of Ogden, within and for the district and Territory aforesaid, on the sixteenth day of November, A. D. 1885, and continued by adjournment to and including the second day of December, A. D. 1885.

UNITED STATES OF AMERICA *against* LORENZO SNOW.

The grand jurors of the United States of America, within
7 and for the district aforesaid, in the Territory aforesaid, being duly empaneled and sworn, on their oaths do find and present that Lorenzo Snow, late of said district, in the Territory aforesaid, heretofore, to wit, on the first day of January, in the year of our Lord one thousand eight hundred and eighty-three, at the county of Box Elder, in the said district, Territory aforesaid, and within the jurisdiction of this court, and on divers others days and times thereafter, and continuously between said first day of January, A. D. 1883, and the thirty-first day of December, A. D. 1883, did then and there unlawfully live and cohabit with more than one woman, to wit, with Adeline Snow, Sarah Snow, Harriet Snow, Eleanor Snow, Mary H. Snow, Phœbe W. Snow, and Minnie Jensen Snow; and during all the period aforesaid, at the county aforesaid, he, the said Lorenzo Snow, did unlawfully claim, live, and cohabit with all of said women as his wives, against the form of the statute of the said United States in such case made and provided and against the peace and dignity of the same.

V. BIERBOWER,
Ass't U. S. Dis. Attorney.
J. W. McNUTT,
Foreman of Grand Jury.

Endorsed: No. 741. First district court, Territory of Utah. The United States of America against Lorenzo Snow. Indictment for

unlawful cohabitation. A true bill. J. W. McNutt, foreman of grand jury.

Presented in open court by the foreman of the grand jury, and filed by me this fifth day of December, 1885.

A. C. EMERSON, *Clerk.*
V. BIERBOWER,
Ass't U. S. Attorney.

Witnesses examined before the grand jury: C. J. Corey, Lucius A. Snow, Minnie Jensen Snow, Nellie Hansen, Nellie Colebrook, D. H. Peery, Mary Houtz Snow, Eleanor Snow, Harriet A. Snow, Mrs. Lorenzo Snow, Jr., Amelia Hansen, Emma Josephsen, John F. Olsen, Maria Nichols, Frank H. Snow, Dr. J. B. Carrington.

8 UNITED STATES OF AMERICA, } ss:
Territory of Utah, }

At a stated term of the district court of the first judicial district in and for the Territory of Utah, begun and holden at the city of Ogden, within and for the district and Territory aforesaid, on the sixteenth day of November, A. D. 1885, and continued by adjournment to and including the second day of December, A. D. 1885.

UNITED STATES OF AMERICA *against* LORENZO SNOW.

The grand jurors of the United States of America, within and for the district aforesaid, in the Territory aforesaid, being duly empaneled and sworn, on their oaths do find and present that Lorenzo Snow, late of said district, in the Territory aforesaid, heretofore, to wit, on the first day of January, in [the] year of our Lord one thousand eight hundred and eighty-four, at the county of Box Elder, in the said district, Territory aforesaid, and within the jurisdiction of this court, and on divers other days and times thereafter and continuously between said first day of January, A. D. 1884, and the thirty-first day of December, A. D. 1884, did then and there unlawfully live and cohabit with more than one woman, to wit, with Adeline Snow, Sarah Snow, Harriet Snow, Eleanor Snow, Mary H. Snow, Phœbe W. Snow, and Minnie Jensen Snow; and during all the period aforesaid, at the county aforesaid, he, the said Lorenzo Snow, did unlawfully claim, live, and cohabit with all of said women as his wives, against the form of the statute of the said United States in such case made and provided and against the peace and dignity of the same.

V. BIERBOWER,
Ass't U. S. Dist. Attorney.
J. W. McNUTT,
Foreman of Grand Jury.

9 Endorsed: No. 743. First district court, Territory of Utah. The United States of America against Lorenzo Snow. Indictment for unlawful cohabitation. A true bill. J. W. McNutt, foreman of grand jury.

Presented in open court by the foreman of the grand jury and filed by me this fifth day of December, 1885.

A. C. EMERSON, *Clerk.*
V. BIERBOWER,
Asst. U. S. Attorney.

Witnesses examined before the grand jury: C. J. Corey, Lucius A. Snow, Minnie Jensen Snow, Nellie Hansen, Nellie Colebrook, D. H. Peery, Mary Houtz Snow, Eleanor Snow, Harriet A. Snow, Mrs. Lorenzo Snow, Jr., Amelia Hansen, Emma Josephson, John F. Olsen, Maria Nichols, Frank H. Snow, Dr. J. B. Carrington.

UNITED STATES OF AMERICA, } ss:
Territory of Utah, }

At a stated term of the district court of the first judicial district in and for the Territory of Utah, begun and holden at the city of Ogden, within and for the district and Territory aforesaid, on the sixteenth day of November, A. D. 1885, and continued by adjournment to and including the second day of December, A. D. 1885.

UNITED STATES OF AMERICA *against* LORENZO SNOW.

The grand jurors of the United States of America, within and for the district aforesaid, in the Territory aforesaid, being duly empaneled and sworn, on their oaths do find and present that Lorenzo Snow, late of said district, in the Territory aforesaid, heretofore, to wit, on the first day of January, in the year of our Lord one thousand eight hundred and eighty-five, at the county of Box Elder, in the said district, Territory aforesaid, and within the jurisdiction of this court, and on divers other days and times thereafter and continuously between said first day of January, A. D. 1885, and the first day of December, A. D. 1885, did then and there unlawfully live and cohabit with more than one woman, to wit, with Adeline Snow, Sarah Snow, Harriet Snow, Eleanor Snow, Mary H. Snow, Phœbe W. Snow, and Minnie Jensen Snow; and during all the period aforesaid, at the county aforesaid, he, the said Lorenzo Snow, did unlawfully claim, live, and cohabit with all of said women as his wives, against the form of the statute of the said United States in such case made and provided and against the peace and dignity of the same.

V. BIERBOWER,
Asst. U. S. District Attorney.
J. W. McNUTT,
Foreman of Grand Jury.

Endorsed: No. 742. First district court, Territory of Utah. The United States of America against Lorenzo Snow. Indictment for unlawful cohabitation. A true bill. J. W. McNutt, foreman of grand jury.

Presented in open court by the foreman of the grand jury, and filed by me this fifth day of December, 1885.

A. C. EMERSON, *Clerk.*
V. BIERBOWER,
Asst. U. S. Attorney.

Witnesses examined before the grand jury: C. J. Corey, Lucius A. Snow, Minnie Jensen Snow, Nellie Hansen, Nellie Colebrook, D. H. Peery, Mary Houtz Snow, Eleanor Snow, Harriet A. Snow, Mrs. Lorenzo Snow, Jr., Amelia Hansen, Emma Josephson, John F. Olsen, Maria Nichols, Frank H. Snow, Dr. J. B. Carrington.

That on the eleventh day of December, 1885, this defendant
11 was arraigned in this court on each of said indictments and on the sixteenth day of December, 1885, pleaded not guilty to each of said indictments, and to the alleged offense charged in each.

That said indictments were all found for unlawful cohabitation made against this defendant before the grand jury, and examined upon one oath and one examination as to the alleged offense during the entire time mentioned in all of said three indictments, and upon the testimony of witnesses given on an examination covering the whole time specified in said three indictments.

That on the thirtieth day of December, 1885, this defendant was first put upon his trial in this court, before the court and a jury duly empaneled, sworn, and charged to try the issue presented by the third of said indictments, to wit, the indictment charging unlawful cohabitation from the first day of January to the first day of December, 1885, and the plea aforesaid thereto, and such proceedings were had therein that on the thirty-first day of December, 1885, the said jury rendered in this court a verdict of guilty against this defendant, in manner and form as charged in said third indictment, and said verdict is of record in this court, and not set aside or in any wise impeached or reversed.

And the defendant saith that he is the indentical person charged in all said three indictments, and the offense in all said indictments is one continuous offense, and the same offense, and not divisible, and he prays judgment that he be discharged and dismissed from the premises in the indictment to which this plea is made.

To which said plea of said defendant the United States district attorney orally demurs, for the reason that said plea does not state facts sufficient in law to be a bar to the further prosecution, which said demurrer is duly argued by said counsel and submitted to the court for decision.

12 And the court now here, being fully advised in the premises, and due deliberation being thereupon had, does consider that said demurrer is well taken, and that the same ought to be, and the same is hereby, sustained; to which ruling of the court said defendant, by his said counsel, duly excepts.

The said parties then being ready for trial, thereupon came a jury, to wit, Walter Holbrook, W. H. Wattis, George B. Douglas, A. C. Smith, P. J. Thoursted, Phillip Grill, J. P. Jones, George Lashus,

Richard Slater, James Thompson, E. N. Williams, [and] M. O. Johnson, good and lawful men, residents of the first judicial district, who, being legally empaneled and sworn well and truly to try the cause, sat together and heard the testimony of the witnesses in part, and the further trial of the cause is adjourned until to-morrow morning at 10 o'clock.

ORLANDO W. POWERS, *Judge.*

In open court, Monday, January 4th, A. D. 1886.

The jury heretofore empaneled in this cause again sat together and heard the testimony of the witnesses in conclusion, the arguments of counsel and the instructions of the court, retired from the bar of the court, in charge of a sworn officer, to consider of their verdict, and subsequently returned into court, and, being called, answered to their names, and on their oaths say: "We, the jury empaneled in the above-entitled cause, find the defendant, Lorenzo Snow, guilty as charged in the indictment."

Whereupon the court fixes Saturday, January 16th, 1886, as time for passing sentence.

ORLANDO W. POWERS, *Judge.*

In open court, Tuesday, January 5th, A. D. 1886.

13 *Verdict of Jury.*

(Title of court and cause.)

We, the jury empaneled in the above-entitled cause, find the defendant, Lorenzo Snow, guilty as charged in the indictment.

M. O. JOHNSON, *Foreman.*

Ogden city, Utah, Jan. 5, 1886.

Endorsed: No. 743. Filed January 5th, 1886. A. C. Emerson, clerk.

Motion for New Trial.

(Title of court and cause.)

And now comes the defendant and moves the court to set aside the verdict herein and grant a new trial on these grounds:

1. The court misdirected the jury in matters of law.
2. The court erred in the decision of questions of law arising during the course of the trial.
3. The verdict is contrary to law.
4. The verdict is contrary to evidence.

Dated January 8th, 1886.

F. S. RICHARDS,
Att'y for Defendant.

Endorsed: No. 743. Filed January 7, 1886. A. C. Emerson, clerk, by Isaac Goldberg, deputy clerk.

Order Overruling Motion for New Trial.

(Title of court and cause.)

This cause came regularly on to be heard this day, upon the motion of said defendant for a new trial of this cause, for the reasons and on the grounds as in said motion stated.

14 The said motion being submitted to the court for decision and determination, and the court now here being fully advised in the premises, it is ordered by the court that said motion for a new trial herein be, and the same is hereby, overruled and denied.

To which ruling of the court said defendant duly excepts.

ORLANDO W. POWERS, *Judge.*

In open court, Saturday, January 16, A. D. 1886.

Judgments on Indictments Nos. 741, 742, 743 *for Offenses of the Years* 1883, 1885, *and* 1884 *Respectively.*

The defendant and his counsel, F. S. Richards and C. C. Richards, Esqrs. (*of counsel*), came into court. The defendant was duly informed of the nature of the indictments found against him on the 5th day of December, A. D. 1885, by the grand jury of this court for the crime of unlawful cohabitation committed as stated in said indictments and during the time as follows, viz: Indictment No. 741 between the first day of January, A. D. 1883, and the thirty-first day of December, A. D. 1883; indictment No. 742 between the first day of January, A. D. 1885, and the first day of December, A. D. 1885; indictment No. 743 between the first day of January, A. D. 1884, and the thirty-first day of December, A. D. 1884; of his arraignment and plea of not guilty, as charged in said three indictments, on the sixteenth day of December, A. D. 1885; of his trial and the verdicts of the juries; indictment No. 742, "Guilty as charged in the indictment," on December 31, 1885; indictment No. 743, "Guilty as charged in the indictment," on January 5, 1886; indictment No. 741, "Guilty as charged in the indictment," on January 5, 1886.

15 The said defendant was then asked if he had any legal cause to show why judgment should not be pronounced against him, to which he replied that he had none. And no sufficient cause being shown or appearing to the court thereupon the court renders its judgment: That whereas said Lorenzo Snow having been duly convicted in this court of the crime of unlawful cohabitation:

It is ordered, adjudged, and decreed that said Lorenzo Snow be imprisoned in the penitentiary of the Territory of Utah for a period of six months, and that he do forfeit and pay to the United States a fine of three hundred dollars and the costs of this prosecution, and that he do stand committed into the custody of the U. S. marshal for said Territory until such fine and costs be paid in full. (As to indictment No. 741.)

And it is further ordered, adjudged, and decreed that at the expiration of the sentence and judgment rendered on said indictment

No. 741 said Lorenzo Snow be imprisoned in the penitentiary of Utah Territory for a period of six months, and that he do forfeit and pay to the United States the sum of three hundred dollars and the costs of this prosecution, and that he do stand committed into the custody of the U. S. marshal for said Territory until such fine and costs be paid in full. (As to indictment No. 742.)

And it is further ordered, adjudged, and decreed that at the expiration of the sentence and judgment as last above rendered on said indictment No. 742 said Lorenzo Snow be imprisoned in the penitentiary of Utah Territory for a period of six months, and that he do forfeit and pay to the United States the sum of three hundred dollars and the costs of this prosecution, and that he do stand committed into the custody of the U. S. marshal for said Territory until such fine and costs be paid in full. (As to indictment No. 743.)

The said defendant, Lorenzo Snow, is remanded into the
16 custody of the United States marshal for Utah Territory, to be by him delivered into the custody of the warden or other proper officer in charge of said penitentiary. And said warden or other proper officer of said penitentiary is hereby commanded to receive of and from the said United States marshal him, the said Lorenzo Snow, convicted and sentenced as aforesaid, and him, the said Lorenzo Snow, keep and imprison in said penitentiary for the periods as in this judgment ordered and specified.

Counsel for said defendant moves the court that as said defendant has filed in this court a notice of appeal to the supreme court of Utah Territory from the order overruling defendant's motion for a new trial and from the judgment of this court made and entered, this defendant be admitted to bail pending such appeal and the hearing thereof in said supreme court. Whereupon the court orders that said defendant be admitted to bail in each of said cases, in the sum of five thousand dollars in each case, with two good and sufficient sureties.

And on motion of said defendant's counsel it is ordered that said defendant have ten days additional time to prepare, file, and serve bills of exceptions in each case.

ORLANDO W. POWERS, *Judge.*

In open court, Saturday, January 16, A. D. 1886.

Notice of Appeal.

(Title of court and cause.)

Please take notice that the said Lorenzo Snow, the appellant herein, appeals to the supreme court of Utah Territory from the order of the court overruling the motion for a new trial on the in-
17 dictment for 1884, made on the sixteenth day of January, 1886; also from the final judgment rendered herein against the appellant on said sixteenth day of January, 1886.

Dated January 16, 1886.

F. S. RICHARDS AND
BENNETT, HARKNESS & KIRKPATRICK,
Attorneys for Appellant.

Endorsed: No. 743. Filed January 16, 1886. A. C. Emerson, clerk.

I hereby accept service of a copy of the within notice this 16th day of January, 1886.

V. BIERBOWER,
Asst. U. S. District Att'y.

Appeal Bond.

TERRITORY OF UTAH, } ss:
County of Weber, }

An indictment, No. 743, having been found on the fifth day of December, A. D. 1885, in the district court of the first judicial district of Utah Territory, charging Lorenzo Snow with the crime of unlawful cohabitation, and he having been heretofore convicted and this day sentenced on said charge, and having appealed to the supreme court of Utah Territory, and by order of said district court having been admitted to bail in the sum of five thousand dollars, we, David H. Peery and Hyrum S. Young, both residents and householders in the Territory of Utah, do hereby undertake that the above-named Lorenzo Snow will appear and answer the charge above named, in whatever court the same may be prosecuted, and will at all times hold himself amenable to the orders and process of this court, and, if the judgment of said district court shall be affirmed, will appear and render himself in execution of judg-
18 ment, or, if he fail to perform either of these conditions, we will pay to the United States the sum of five thousand dollars.

LORENZO SNOW. [SEAL.]
D. H. PEERY. [SEAL.]
H. S. YOUNG. [SEAL.]

Acknowledged before and approved by me this 16th day of January, A. D. 1886.

[SEAL.] A. C. EMERSON, *Clerk.*

TERRITORY OF UTAH, } ss:
County of Weber, }

David H. Peery and Hyrum S. Young being duly sworn, each for himself says: That he is a resident and householder in the Territory of Utah, and is worth the sum of five thousand dollars, the amount specified in the foregoing undertaking as the penalty thereof, over and above all his just debts and liabilities, exclusive of property exempt from execution.

D. H. PEERY.
H. S. YOUNG.

Subscribed and sworn to before me this 16th day of January, A. D. 1886.

[SEAL.] A. C. EMERSON, *Clerk.*

Endorsed: No. 742. Approved and filed January 16, 1886. A. C. Emerson, clerk.

Bill of Exceptions.

(Title of court and cause.)

This case came on for trial before the court and a jury duly impanneled and sworn on the 4th day of January, 1886.

SARAH SNOW, a witness for the prosecution, testified:

"I am married; my husband is Lorenzo Snow; I have
19 been married to him forty years, and never divorced. He supported me in 1884. I was his wife during 1884. I did not look upon him as my husband in 1884. I don't know whether he looked upon me as his wife. I can't tell whether he recognized me as his wife in 1884. I lived in the old homestead in 1884, and have lived there over thirty years. Lorenzo Snow provided for my support in 1884, and he provided for my home and all my wants. After we were married we lived as husband and wife, and that continued till about fifteen years ago."

Q. "What difference, if any, socially, was there in your marital relations in 1884 and fifteen years ago?"

A. "Well, he supported me and that is as near as I can tell. He might have called on me during the year 1884. I think he called to see my daughter when she was sick; I cannot remember how many times; perhaps two or three times. I mean two or three times during the whole of the year 1884. I lived on one corner of the block and he lived on the other corner. When the gates are left open it is in the same yard. In 1884 I lived and he lived in Box Elder county, Utah Territory. In 1884 he had seven wives, and their order is Adeline first, Sarah (myself) second, Harriet third, Eleanor fourth, Mary fifth, Phœbe sixth, Minnie seventh. Charlotte and Caroline are dead."

Cross-examined:

"In 1884 I lived at the old homestead. I lived with defendant as his wife until fifteen years ago. I did not live with him as his wife in 1884. He did not sleep in my house or eat in it in 1884. One time he called to see my daughter, who was sick. His calls were made in the day time and he stayed perhaps five minutes. There was no room kept in the house for defendant and he did not occupy any room there in 1884. The daughter he called to see was his child as well as mine. He merely called to see how she was getting along. I think he called twice to see her. He did not sit down, stayed about three minutes one time and about five minutes the other time. He just merely called to see how she was getting along and to fetch her some medicine."

20 HARRIET SNOW, a witness for the prosecution, testified:

"I was married to Lorenzo Snow, in Nauvoo, in 1846, and have never been divorced. He was not my husband in 1884, according to the general term of husband; he did not live with me as a wife. He had arranged for my support and I drew it as common. In

1884 I looked upon him as my companion, the husband of my youth. He lived with me as my husband in my youth, but during the past few years has not—he don't live with me as my husband. I can't recollect that I stated on the witness stand last Thursday that he was as much my husband to-day as ever, except that he don't visit me as frequently as a few years ago, or of making the substance of that statement. He was not as much my husband in 1884 as he was in my younger days. He does not visit me as a husband visits his wife. There was as good deal of difference in our relations in 1884 and formerly; when I was young he lived with me as a husband and I was raising him children, but in 1884 my age liberated me from that duty. In 1884 the marriage relation did not continue as it was in my younger days. I was an old lady in 1884. I was not a married woman in 1884, according to your faith; according to mine, I was his companion. I was a married woman, according to my faith, in 1884. I call myself a married lady. I was sealed to the defendant for time and eternity. When a lady gets so that she cannot bear children, then she is released from some of her duties as a wife. I mean that he is my companion, but not husband. In 1884 I lived in my own home. Franklin Snow lived with me. No ladies lived with me. Eleanor and Sarah lived in different compartments of the same house. It is a main building with four wings, and is known as the old family homestead. In 1884, Sarah, Eleanor, and I each lived there in her own home. Mary lived in her own home about a couple of blocks off, and Phœbe and Adaline lived a couple of blocks down the street, in what is known as the Cotton Thomas house. Minnie lived, in 1884, in the brick house. I cannot tell positively that Mr. Snow visited or called on me during the year 1884. He might have come in—I could not be positive as to that. Our rela-
21 tions during that year were friendly—we met as friends, and he called as a friend. He did not dine with me, and I think he was not invited to the house during that year. I cannot say that I saw him dine with Eleanor or Sarah during the year 1884. He was living on the other corner of the block on which the homestead stands. The block was fenced in during the year 1884. It was fenced in with a high fence part of the way, and part of the way with a picket fence. I might have seen Mr. Snow in 1884; he may have called on some business; I could not be positive. I have not seen any of the other wives visit him in 1884. I cannot be positive that I have seen him in the old homestead during 1884. I think he was at home sometimes and away sometimes during that year. He is away a good deal, and I did not always know whether he was home or away."

Cross-examined:

"I think the defendant did not eat in my house in 1884. I think I ate once in the same room with him; it was at the Big Tabernacle and there were several tables and a large number of people in the room. It was in May, 1884, and his seventieth birthday. Minnie and the whole family were there, and a houseful of people ate. I

ate at one of the tables and cannot say whether or not it was the same table at which he ate. He has not slept in my house in 1884, and I have not slept in any other house. I cannot say positively that he called at my house in 1884. He might have called at the door or something about the time of this supper; but I cannot say positively. I was invited to the supper some other way. As many as could convene weve invited to the supper in the Tabernacle, and the supper was on the occasion of his seventieth birthday. The room is larger than this court-room and was full of people. No room was kept in my house for Mr. Snow in 1884, and he did not occupy any room there. No mail for him came to my house. His office was in the brick house in 1884, and Minnie Snow, and maybe a hired girl, lived there; and, according to the best of my knowledge, defendant lived there in Minnie's house."

22 Redirect:

"At the birthday party there were many neighbors and friends, outside of the Snow family."

ELEANOR SNOW, a witness for the prosecution, testified:

"According to my religion I was a married woman in 1884, and my husband was Lorenzo Snow, and I never was divorced from him. I was living in my house in 1884, and that is the house known as the old homestead. Harriet and Sarah also lived there in separate but adjoining compartments. I have been living there thirty—I guess thirty-five—years, and during this time the same ladies have lived there in the same house. There is a wing which Mary lived in before she moved to her place."

Q. "State if at any time prior to 1884 Mr. Snow and all the wives lived together in the old homestead."

Objected to by defendant as incompetent and irrelevant.

Objection overruled, and defendant excepted.

A. "We lived just the same as we have done since. He lived over in the brick house in 1884, and before he moved to the brick house he lived in the old homestead, and he lived there about thirty years. When defendant lived in the old homestead Sarah, Harriet, and myself lived there. Minnie lived in a wing of the old homestead. He moved away from the old homestead to the brick house about four years ago, and Minnie went with him. According to my religion, I recognized Mr. Snow as my husband in 1884. I don't know what difference there was in our marital relations in 1884 and the earlier years of my life."

Q. "State if the main difference is in the fact that he does not visit you as frequently as he did in former years."

A. Well, you know, he didn't for a good many years; he has not lived with me for a good many years. I don't remember whether during 1884 he ever called on me socially; he might have just called. He did not dine with me in 1884. I cannot remember that I saw him dine in that house in 1884."

Cross-examination:

"I did not live with defendant as his wife during any part
23 of the year 1884. He did not sleep or dine at my house that year. I have no recollection that he called that year, but he might have done so a few minutes. I do not remember now; if he called it was during the day. If he called in 1884 it was just to see the children and folks, for ten or fifteen minutes. There was no room kept in the house for him and he did not occupy any room there. None of his mail or business papers came there."

Redirect:

"Defendant fixed things years ago for our support, and this continued during the year 1884."

By the COURT: "Do you mean by not living with him as his wife merely that you have not been sexually intimate during that time?" A. "No, sir; that is not the only thing I mean by that. I mean that the only difference is in my manner of living. I have had my income for years. He did not live with me at all at any time during that year, either as husband or otherwise."

MINNIE SNOW, a witness for the prosecution, testified:

"I was married to Lorenzo Snow in 1871, and I presume he was my husband in 1884. I lived during 1884 in my house and Mr. Snow and my family lived with me. My family consists of three children, the oldest ten years and the youngest three months. I lived at the old homestead before moving into the brick house, and moved to the brick house in May, 1882. Mr. Snow was absent some of the time in 1884, but he was away so much that I could not tell how much. I should think he was at home most of the time in 1884. I do not know that he went visiting in 1884; I don't suppose he had much time for that. I did not see him visit among the neighbors or friends."

Cross-examined:

"The defendant's home in 1884 was at my house, the brick house,
and I am not aware that he had any other home in Brigham
24 City. I know he had not. He made that his exclusive home when he was in Brigham City. I would know when he was going out of town or anything of that sort."

Redirect:

"He had an office in my house in 1884, and his mail came there, and he transacted most of his business there. The way I know when he is out of town I nearly always take him to the train, and when he comes home I go for him."

Mrs. HULDA J. SNOW, a witness for the prosecution, testified:

"My husband is Lorenzo Snow, Jr., a son of the defendant, and I am a sister of Minnie Snow. In 1884 I was living two blocks south of the Co-op. in Brigham City. I saw defendant that year at my

house and at meeting. He was alone. I cannot call to mind seeing him anywhere else. I visited with the family relatives that year, and visited at the old homestead. I cannot say that I met the defendant there in 1884. I saw him at the brick house every time I would go there, and never saw him at any of the other houses, or in company with any of the other wives. I know Sarah, Harriet, and Eleanor. They were known in the family and among the people as Mrs. Snows; so reputed."

FRANK H. SNOW, a witness for the prosecution, testified:

"I resided in Brigham City in 1884, and I am a son of Lorenzo Snow. My mother's name was Caroline, and I have been adopted by Harriet. I was at home during 1884, and saw Lorenzo Snow on the street, at the store, the meeting-house, and the reunion, which was a supper on the anniversary of his seventieth birthday. I live with Harriet Snow in the old homestead. I don't recollect meeting my father there in 1884. He might visit there frequently and I not see him. I did not see him in company with any of his wives in 1884 that I recollect. I might have seen him with Minnie going up to the meeting house or something of that kind. My place of business is one block from the brick house, and my home was at the old homestead, Harriet Snow's house. I take most of my meals there and sleep there, and I do not recollect seeing him there in 1884."

25 LUCIUS A. SNOW, a witness for the prosecution, testified:

"I am a son of Lorenzo Snow, and Harriet is my mother, and in 1884 I resided on a farm about two miles north of Brigham City. I have seen defendant at various places in 1884—on the street, at the Co-op., passing down the street toward what is known as the Cotton Thomas house, and I suppose at various other places. I have not seen him at the old homestead in 1884, and there being a wall around it I do not know that I would notice him if he was there. I expect I have seen him in company with Minnie, but cannot state positively. I saw him with Harriet, my mother, at my farm; he came out there with her. I do not know that I saw him in company with any of the wives in town. I did not see him riding with any of them. I have not attended church. These ladies are every one of them his wives and are recognized as such—that is, generally known and recognized by all in the community. My father is about 72 years old, and he has varied business interests there. When my father and mother come to the farm it was some time in the afternoon. They came with my father's sister, and I believe Olsen was driving the team. My mother and Aunt Eliza came down to the house. My father went on to the farm which adjoins mine, and was gone perhaps an hour, and then he came to the house and escorted the ladies to the carriage and they went away. That is the only time in 1884 I can designate as seeing my father with either of these women. In front of the old homestead the wall is about four feet high and a picket fence on top. A person in the front yard could be seen from the street, but not if he was around behind the house. There is no wall

in front of the brick house. There is one on the west side, part of the way—there is a high wall or fence. I think the wall extends only part of the way. I think it is an eight-acre block; would not be positive. It is not square. The old homestead is about twenty rods from the brick house, I should judge. The block is fenced around and there is a high fence between the old homestead and brick house. The old wall is about seven feet high."

26 (Witness here explained, with permission of the court, as follows:)

"I wish the jurors in this court to understand that Harriet Snow is as much my father's wife as she ever was. Proving here that my father did not visit my mother a great deal in 1884, or that he has not eaten or slept there, makes no difference. I wish it understood that neither I nor any of the family can testify to his eating a meal there unless specially invited, or that he slept there, or stayed over night, or was in her bed-room, and I warn you that the whole family of children cannot testify any different."

MARY SNOW, a witness for the prosecution, testified:

"According to my religious belief I am married—and was married to defendant in 1857, and have had no divorce. In 1884 I lived in my own home, by myself—with my children—and had lived there eight years prior to 1884. Before then I lived in the old homestead, and then, I think, there were five of us lived there, including myself. I moved about ten years ago and have been living there with my children ever since. During 1884 the defendant provided for my support."

Cross-examined:

"The defendant did not sleep or eat in my house in 1884. He did not live with me at all. As I stated before, he called as any other gentleman friend and nothing more."

Dr. CARRINGTON, a witness for the prosecution, testified:

"I lived in Brigham City in 1884, and knew Lorenzo Snow, and saw him at different times and places. I saw him with Aunt Sarah in Little Valley, at the house where I was attending his daughter. I saw him twice, at the house of Sarah, in the old homestead, in 1884. I saw him there in the evening; don't think he was there over five minutes. I rendered professional service for the family in 1884, and the defendant, who is generally known as Apostle Snow, paid me. These ladies (named in the indictment) were known as his wives, in Brigham City, in 1884."

Cross-examined:

"I saw defendant twice at the old homestead, in 1884, just
27 toward evening. He came there to see his daughter, whom I was attending, and who had her skull fractured. The first time he came while I was there [he] inquired about the condi-

tion of the patient, stayed about five minutes, and left before I did, and was in my presence all the time. The other time he came in while I was there [he] inquired of me about the condition of his daughter, and I think I left him there on that occasion. It was in August and before dark. These were the only occasions I saw him there in 1884. I saw him at Little Valley with Sarah in 1884. I was called by his son, Lorenzo Snow, Jr., to go up in the evening to see his (defendant's) daughter, who had met with an accident, and I met the defendant there. A team had run away, and his daughter and two or three others were thrown to the ground and injured, and I found the father and mother there. This is the same case I have spoken of at Sarah's house. The patient was left at Little Valley two or three days, unable to get away. Except as I have named I did not see him in company with any of the inmates of the old homestead in 1884."

Redirect:

"I saw him out riding once in the evening of August 3d, 1884. He was going with his daughter from Little Valley home, and the father and mother were in the same conveyance."

Recross:

"The daughter's injury was a fractured skull and was quite serious."

O. C. VANDERCOOK, a witness for the prosecution, testified:

"I am and was last November a U. S. deputy marshal, and had charge of the party that arrested the defendant in Brigham City. I found him in a brick house opposite the Co-op. It was perhaps fifteen minutes after we demanded admission before we were let in. We searched the house thoroughly, from the garret to the cellar and from cellar to garret. After a time I discovered a rip in the carpet and a trap door under the carpet. Mrs. Minnie Snow and some small children were in the house and we made inquiries of
28 her. After a close search we discovered this trap door in the northwest corner of the room. There was an Angora goat skin over the carpet and the carpet was ripped at the seam, and beneath the carpet was the trap door. Below we found a small compartment and a door leading to another. I was certain he was in there, and called on him twice to give himself up, and on my second call he came out. I think this trap door led down to compartments beneath the surface of the ground."

C. J. COREY, a witness for the prosecution, testified:

This witness gave to the jury a diagram of the block, fences, etc., and stated in substance that on account of the fences a person could pass from the brick house to the old homestead and not be visible the whole of the way from any point on the street.

The prosecution here rested.

HARRIET SNOW, a witness for the defendant, testified:

"I heard the testimony of Lucius Snow in regard to the defend-

ant, his sister Eliza, and I going in a carriage to Lucius' farm in 1884. The carriage drove in front of my dwelling. Olsen was driving and the defendant and his sister were in the carriage. I got in and sat on the back seat with Eliza, and we went to Lucius' farm, where Eliza and I got out and defendant and Olsen went on and came back in about an hour. Eliza and I then got in and rode home in the same way. I got out at my house and the others went on to the brick house. Eliza R. Snow is defendant's sister. I do not remember riding with him any other time in 1884."

P. F. MADSEN, a witness for defendant, testified:

"I reside in Brigham City, am probate judge of Box Elder county, and have been county recorder."

The defendant here put in deeds from the defendant to each of the wives named in the indictment, conveying to each the premises occupied in 1884, and the old homestead was conveyed in separate parts to the several occupants. The deeds were dated and executed in 1874, most of them bearing a filing for record in that year, and the certificate of the recording of some was in 1874 and of
29 others in 1882. The witness identified the premises conveyed to each as the premises occupied by each separately in 1884. One of the deeds to Minnie for part of the brick house premises was made in 1879; a deed for another part in 1874.

"My place of business is in the court-house. I live one block north and one west from the brick house, and I pass it in going to and returning from my place of business. In 1884 defendant's home was at the brick house the whole of the year. I have called there quite frequently, and always found him at the brick house. I never went to the other houses in 1884 to see him. It was generally understood that the brick house was the only home he had occupied for a number of years past. It has been the general repute that he lived there exclusively with Minnie. I know the old homestead premises. Originally the homestead premises were surrounded with a brick wall built about 26 years ago. I helped to haul the stone. In making improvements part of it has been taken down and other parts are dilapidated and partly fallen down. Front of the old homestead the fence is partly rock and partly picket fence; any one passing can readily see inside; front of the brick house is a picket fence, and one can see in."

Cross-examined:

"These ladies who have testified were known as his wives in 1884, including Harriet, Sarah, Eleanor, Mary, and Minnie, and they were so known in the community. Defendant had an office in the brick house, and my transactions with him were both of a business and social nature. Defendant lived in the old homestead before he moved to the brick house."

Q. "Who lived there with him?"

Objected to. Objection overruled, and defendant excepted.

A. "His different wives lived there. He moved in 1880 or 1881, I think, and they lived there until then. In giving the repute that he lived exclusively at the brick house I refer to the repute of the general public, the community, and not one class. I do not know that I can give you the name of any Gentile or other person
30 who has spoken of it. I understand by repute that it is the general public acceptance as a general thing, but I could not name a single person who has said it."

Redirect:

"I could not name one person who has told me Grover Cleveland is President of the United States."

H. E. BOWRING, sworn for the defense, testified:

"I live in Brigham City, know the defendant, and live about two blocks west of his home, and my place of business is on the northeast corner of the block on which Mr. Snow lives. I passed the house of defendant in 1884 every day that I was in town, and his home during that year was in the brick house where Minnie Snow lives. I did not see him at any of the other houses. I saw him at the brick house frequently. The general repute was that he lived with but one wife, Mrs. Minnie."

Cross-examined:

"I have always understood Adeline is defendant's first wife. She lived about two blocks north of the corner of my residence. He has not been divorced from her that I have heard of, and I presume she was his wife in 1884, and Sarah, Mary, Phœbe, Eleanor, and Minnie were reputed to be his wives in 1884. I did not, in 1884, see him visit any of these other wives or at the house of either. I have seen him pass by the houses on the street. By the repute that he was living with only one I mean the repute of the general public. I could name several who have spoken of it—my wife for one party, and Mr. Booth, who is a Gentile. I probably saw Adeline two or three times in 1884 in her house; her daughter was with her. I am acquainted with the ground floor of the brick house. I never was under the ground floor."

There was evidence tending to show that defendant supported all the women named in the indictment as wives during the year 1884, including Adeline.

The defendant rested, and no further or other evidence was given.

The defendant, by counsel, requested the court to instruct the jury as follows:

1. The defendant should be acquitted unless you find it is proven by the evidence before you beyond a reasonable doubt that he
31 has cohabited with more than one of the women named in the indictment some part of the time in the year 1884.

2. The term "cohabit" means "live with" or "dwell with," and in the act under which the defendant is indicted it means "to live with as wives."

3. To constitute cohabitation there must be such a frequency or regularity and manner of association of a man and woman as to amount to a "living together," and distinguish the association from mere visits, and so long as there is not a living together occasional visits do not amount to cohabitation.

4. The defendant, though living with one wife, could lawfully visit another and her children at reasonable times and for lawful purposes, and the purpose of inquiring concerning the health and welfare of such other wife and his children by her, of providing for their support and the education, employment, and business of the children would be lawful. He is not required by law to break off friendly relations with any of his wives, and may attend friendly or social or religious meetings at their houses, and he may with them visit at the house of mutual friends or relatives, if the meeting is in good faith for such visits only.

5. Having more than one wife and claiming and introducing more than one woman as wives do not constitute the offense charged; you must find, to justify a conviction, that he has lived with more than one within the time named in the indictment.

6. The law assumes the defendant innocent until he is proven guilty beyond a reasonable doubt, and his guilt or innocence is to be determined by you, and what others or the public may have believed, or had reason to believe from his manner of living, is not the issue; but you are to say from the evidence whether or not he did, in fact, live with more than one woman, as charged.

Each of these instructions was refused, and to the refusal to give each the defendant excepted.

The court instructed the jury as follows:

32 "GENTLEMEN OF THE JURY: This case is a prosecution for an alleged misdemeanor. It is charged that the defendant, on January 1st, 1884, in the county of Box Elder, in this district and Territory, and on divers other days and times thereafter, and continuously between said first day of January, 1884, and the thirty-first day of December, 1884, did then and there unlawfully live and cohabit with more than one woman, to wit, with Adeline Snow, Sarah Snow, Harriet Snow, Eleanor Snow, Mary H. Snow, Phœbe W. Snow, and Minnie Jensen Snow, and during all the period aforesaid, at the county aforesaid, he, the said Lorenzo Snow, did unlawfully claim, live and cohabit with all of said women as his wives.

"If you believe from the evidence, gentlemen of the jury, beyond a reasonable doubt, that the defendant cohabited with the women named, or any two of them, as wives, and that he held the women, or any two of them, out to the world as wives by his language or his conduct, or both, you should find him guilty. It is not necessary that the evidence should show that the defendant and these women, or either of them, occupied the same bed or slept in the same room; neither is it necessary that the evidence should show that within the time mentioned in the indictment the defendant had sexual intercourse with either of them. The phrase "cohabit with more than one woman," used in the statute, means to live with as wives. The offense of cohabitation is complete when a man, to

all outward appearances, is living or associating with two or more women as wives. Of course the defendant might visit his children by the various women; he may make directions regarding their welfare; he may meet the women on terms of social equality; but if he associates or lives with the women, or any two of them, as a husband with his wife, he is guilty. The Supreme Court of the United States, in construing the Edmunds act, says: That the statute 'seeks not only to punish bigamy and polygamy when direct proof of the existence of those relations can be made, but to prevent a man
33 from flaunting in the face of the world the ostentation and opportunities of a bigamous household, with all the outward appearances of the continuance of the same relations which existed before the act was passed.'

"Before you can find the defendant guilty you must be satisfied beyond a reasonable doubt that he has cohabited with two or more of the women named during the time or a portion of the time named in the indictment, to wit, between the first day of January, 1884, and the thirty-first day of December, 1884.

"The evidence introduced as to what occurred prior to the time named in the indictment is before you for your consideration, as tending to throw light upon the relations of the parties within the time charged. If there is evidence that the defendant had married the women, had been living with them as his wives before the time named in the indictment, it may be considered by you as tending to throw light upon the relations of the parties within the time charged. If there is evidence that the defendant had married the women, had been living with them as his wives before the time mentioned in the indictment, it may be considered by the jury as adding weight to any circumstances proven, pointing to unlawful cohabitation during the time the offense is charged.

"If you find, beyond a reasonable boubt, that the defendant had, during the year 1884, a legal wife living in Brigham City, Box Elder county, Utah Territory, from whom he was undivorced, that he recognized her as his wife, held her out as such and contributed to her support as such wife, and that during that year he lived in the same house with the woman Minnie, recognizing her as his wife, associated with her as such, and supported and held her out as a wife, then the offense of unlawful cohabitation is complete and you will find the defendant guilty. The legal wife in this case is the woman whom the defendant first married.

The law presumes the defendant innocent until proven guilty beyond a reasonable doubt. A reasonable doubt is a doubt which has
34 some reason for its basis; it does not mean a doubt from mere caprice or groundless conjecture; it is such a doubt as a jury are able to give a reason for. If, after a careful and impartial consideration of all the evidence in the case, you can say and feel that you have an abiding conviction of the guilt of the defendant, and are fully satisfied of the truth of the charge, then you are satisfied beyond a reasonable doubt.

"You must accept the law as given you by the court as final. You are not judges of the law. You will not consider what counsel on

either side have said regarding the law of the case, except so far as it is borne out by the charge of the court. It is not the province of counsel to discuss the law to a jury. You will remember your oaths, and try this case upon the evidence given you from the witness stand and the law as expounded by the court.

"You are the sole judges of the credibility of the witnesses, the weight of the evidence and of the facts. If you find the defendant guilty, you will say in your verdict: 'We, the jury, find the defendant guilty in manner and form charged in the indictment.' If you find the defendant not guilty, you will say: 'We, the jury, find the defendant not guilty.'"

The defendant excepted to the charge to the jury as follows—to that part in these words:

"The offense of cohabitation is complete when a man, to all outward appearance, is living or associating with two or more women as wives."

To that part in these words:

"Of course the defendant might visit his children by the various women; he may make directions regarding their welfare; he may meet the women on terms of social equality; but if he associates or lives with the women, or any two of them, as a husband with a wife, he is guilty."

To that part in these words:

"The Supreme Court of the United States, in construing the Edmunds act, says that 'the statute seeks not only to punish
35 bigamy and polygamy when direct proof of the existence of those relations can be made, but to prevent a man from flaunting in the face of the world the ostentation and opportunities of a bigamous household with all the outward appearances of the continuance of the same relations which existed before the act was passed."

To that part in these words:

"The evidence introduced as to what occurred prior to the time named in the indictment is before you for your consideration as tending to throw light upon the relations of the parties within the time charged. If there is evidence that the defendant had married the women, had been living with them as his wives before the time named in the indictment, it may be considered by you as tending to throw light upon the relations of the parties within the time charged. If there is evidence that the defendant had married the women, had been living with them as his wives before the time mentioned in the indictment, it may be considered by the jury as adding weight to any circumstance proven pointing to unlawful cohabitation during the time the offense is charged."

To that part of the charge in these words:

"If you find beyond a reasonable doubt that the defendant had, during the year 1884, a legal wife living in Brigham City, Box Elder county, Utah Territory, from whom he was undivorced, that he recognized her as his wife, held her out as such, and contributed to her support as such wife, and that during the same year he lived in the same house with the woman Minnie, recognizing her as his wife,

associated with her as such, and supported and held her out as a wife, then the offense of unlawful cohabitation is complete, and you will find the defendant guilty. The legal wife in this case is the woman whom the defendant first married."

The foregoing bill of exceptions is full and correct, and the same is hereby settled.

Dated January 21, 1885.

ORLANDO W. POWERS,
Judge First District Court.

Filed Jan'y 22d, 1886.

A. C. EMERSON, *Clerk.*

36 We certify, and it is stipulated and agreed, that the foregoing is a full, true, and correct transcript in this case.

W. H. DICKSON,
U. S. District Attorney.
F. S. RICHARDS &
BENNETT, H. & K.,
Attorneys for Appellant.

JNO. WILLIAMS,
Of Counsel.

37 Supreme Court, Utah Territory.

THURSDAY, *January* 28*th*, *A. D.* 1886.

* * * * * * *

THE UNITED STATES, Respondent,
vs.
LORENZO SNOW, Appellant. } From 1st Dist. No. 743.

This cause coming on regularly for hearing was argued by R. Harkness and F. S. Richards for appellant, W. H. Dickson for respondent, submitted, and taken under advisement.

SATURDAY, *February* 13*th*, *A. D.* 1886.

A session of the supreme court of Utah Territory was held this day, beginning at 2 o'clock p. m., pursuant to adjournment.

Present and presiding, the Hon. C. S. Zane, chief justice; present also the Hon. J. S. Boreman, associate justice, and the Hon. O. W. Powers, associate justice; the clerk, marshal, and members of the bar. Court was duly opened.

* * * * * * *

THE UNITED STATES, Respondent,
vs.
LORENZO SNOW, Appellant. } From 1st Dist. No. 743.

38 This cause having been heretofore argued and submitted and the court being sufficiently advised thereupon, it is now here considered, ordered, and adjudged, Zane, C. J., dissenting, that the judgment of the district court therein be, and it is hereby, affirmed.

Thereupon, on application of counsel of appellant, it is ordered that remittitur be stayed for thirty days.

39 *Opinion.*

Indictment for 1884.

In the Supreme Court of the Territory of Utah. January Term, 1886.

UNITED STATES OF AMERICA, Respondent,
vs.
LORENZO SNOW, Appellant.
} No. 743 on the District Court Docket.

Appeal from the first district.

BOREMAN, justice, delivered the opinion of the court:

On the 5th day of December, 1885, three indictments were found by the same grand jury against the appellant for the crime of unlawful cohabitation. One was for having committed the offense in 1883, one for having committed it in 1884, and the other in 1885. The alleged cohabitation in each case is with the same women, and the indictments are alike except as to the time the offense is alleged to have been committed.

Demurrers covering the same points were filed and overruled in all of the cases. The indictment for 1885 was first tried, then the one for 1884, and lastly the one for 1883. Motions for new trial were made in all, and, being denied, judgments were, on the 16th day of January, 1886, entered, sentencing the appellant, in each case respectively, to imprisonment in the penitentiary and to pay a fine and the costs.

The appellant has brought the cases to this court on appeals from the orders overruling the motions for new trial and from the respective judgments.

The case we are now called upon to consider is the middle one—the one for 1884.

A material ground urged by the appellant for a reversal of the decision of the court below is that the verdict was contrary to the evidence.

It is now a part of the history of this Territory that in cases of this character nearly all of the witnesses upon whom the Government has to depend to make out its case are unwilling witnesses. They are generally members of the different households of the defendant, under his influence, and also subject to a powerful church pressure to compel them to shield the accused.

The Supreme Court of the United States, when speaking of the object of the whole statute—the Edmunds act—in the case of Cannon *vs.* United States (not yet reported), says: "It refers wholly to the relation between man and woman, founded on the existence of actual marriages, or *on the holding out of their existence.*"

Again, in speaking more particularly of section 3 of the act, the Court says: "It is the practice of unlawful cohabitation with more than one woman that is aimed at—a cohabitation classed with po-

lygamy and having *its outward semblance.* It is not on the one hand meretricious unmarital intercourse with more than one woman. General legislation as to lewd practices is left to the territorial government. Nor, on the other hand, does the statute pry into the intimacies of the marriage relation. But it seeks not only to punish bigamy and polygamy, when direct proof of the existence of those relations can be made, but to prevent a man *from flaunting in the face of the world the ostentation and opportunities of a bigamous household, with all the outward appearances of the continuance of the same relations which existed before the act was passed, and without reference to what may occur in the privacy of those relations.*"

From the language quoted, especially the words we have italicized, *show* that the highest court of the land—the court of last resort—holds that bigamy or polygamy is the marrying of two or more women, and that cohabitation is the pretending or making show to the outside world of keeping up the polygamous or bigamous relations. The sections of the statute in regard to polygamy and bigamy are aimed directly at the destruction of that relation, and the section in regard to unlawful cohabitation is aimed directly at the destruction of the very pretense—the "outward semblance" of that relation. The purpose of the whole statute is thus to destroy polygamy and the evils attendant thereon, and to confine his marital relations to a man's first and only legal wife. When we have reached the object of the law we must interpret the words of the statute to effect the object if it can be reasonably done.

The term cohabitation in the statute means, in general terms, the dwelling or living together as man and wife. It does not necessarily mean to live in the same house; the word house is not used in the definition of it. The man and the woman may dwell or live together in an open field, or on a railroad train, or in the same house. They are to be conveniently situated as to each other and to act in regard to each other in such a manner as to lead the world to believe that the bigamous relationship exists between them. In these polygamous relations there never is and cannot be that intimate association and habitual attention given by the man to the various women as exist between a husband and his wife in the monogamic state. Consequently, in the very nature of things, the proof of cohabitation cannot be made as clear as in the case of a monogamic marriage, simply because the facts of which proof is made do not as abundantly exist. In the case under consideration we find a state of affairs which, by the facts developed in this class of trials, is coming to be well known to have a common existence in this Territory. The wife of a man's youth and all the other women with whom he has lived as husband, more or less of the time, and who have reared children to him, are, as they grow old, pushed off to lead a more lonely life, and the principal attention of the man is given to the youngest and most favored of his women. It is the natural result of a system founded in sensualism and is the same here as in every other country where polygamy or any other system exists to shield the lust of men.

The man who stands at the head of the various households as

shown forth in this case withdrew himself apparently for a large part of his time from his old wife and took up his chief quarters near his youngest woman, yet he kept his various households all conveniently near him and took general care and oversight of affairs. He supported these women and supplied their wants. The old homestead of the appellant was occupied by him and his first wife, Adeline, and a number of his polygamous women for over thirty years. But in 1882—a year and a half before this indictment is found—he took himself and his youngest woman, Minnie, and made his headquarters in another building close by, on the same block—and, to use the language of Sarah, "when the gates were left open it is in the same yard." A large part of the block is surrounded by a high fence, and there is but one other house on the block.

Adeline and Phebe reside in a house two blocks off, a house furnished to them by appellant—not as women, but as wives. Mary lives in another part of the village. Sarah, Harriet, and Eleanor still remain at the old homestead. Appellant keeps up all these various establishments. All of the women (except Mary) lived with him in the old homestead until May, 1882—six women in one house—and after he went out with Minnie, in 1882, the presumption is that all of the other women remained in the old homestead—at least there is no evidence of their having moved out—until in 1884 we find from the evidence that Adeline and Phebe were living in another house. Whether they moved there in 1884 or prior to it does not appear. Adeline appears from the evidence in this case to have been the first wife—there being no evidence that she and another were married to appellant at the same time, thus nullifying the marriage, and as each case has to be settled by the facts as they appear in it, we conclude, so far as this case is concerned, that Adelaide is the first and only legal wife of the appellant.

If a man has a wife, a lawful wife, the strong presumption is that he lives and cohabits with her. This presumption is so strong that in some instances he is not permitted to deny access, and we do not know but that such should be the rule in this class of cases. We have at least a very strong presumption that appellant cohabited with Adeline. This presumption, no doubt, had an influence, and properly so, with the jury. With this presumption as the starting point, it would require a very slight detail of facts to show that the appellant was cohabiting with Adeline, holding her out to the world as his wife. He furnished her a home, he gave her support, he lived continually in the same house with her certainly until May, 1882, and probably down into the year 1884, in which he is charged with cohabiting with her in connection with the other women.

A party was given in 1884 in honor of his 70th birthday, in the tabernacle of the village where he and his polygamous household were located. One witness says that "many neighbors and friends outside of the Snow family" were there. From the context we take it that by the "Snow family" is meant various polygamous households of appellant combined, and that all of the "Snow family" were there, including all these women and their children, and espe-

cially should it naturally be inferred that, above all others, Adeline was there. The same witness says that "Minnie and the whole family" were there. No other "family" than the Snow family has been spoken of, and no doubt by the "whole family" the witness Harriet included herself and the other women. The appellant was there and his whole family, as one family, and some neighbors in addition. "There were several tables;" "a house full of people ate;" they were all in one large room eating and otherwise sociably celebrating his 70th birthday. Here we see him with all his polygamous households, with all these women coming together as his wives to celebrate the birthday of him who claimed them all as his wives. If any of them had been absent the witnesses would not have said that the "whole family" and many "beside the Snow family" were there. We think there is no other conclusion. Add to this treating of these women as wives the fact that Adeline and the other women went by his name—she and each of the others were known as "Mrs. Snow;" that he recognized her and the others as wives; supported them "as wives;" that they were all recognized in the family and out of it and in the whole community as his wives, and we think the jury were fully justified in concluding that he lived and cohabited with Adeline, his first wife.

Sarah says, in her testimony, that she herself was married to appellant many years ago, and has never been divorced; that appellant supported her in 1884; that she lived at the old homestead and had lived there over thirty years; that appellant provided for all her wants; that he might have called on her; that he called, perhaps, two or three times to see his and her sick daughter, and brought medicine. She does not admit and she does not deny that he visited her house, but says that she did not live with him as his wife; that he did not eat or sleep there in 1884; that she kept no room for him and he did not occupy a room there.

Another witness, Dr. Carrington, says that in 1884 he saw appellant with Sarah in Little Valley, at the house where he was attending their daughter, who was injured by an accident. He also saw appellant at Sarah's home, the old homestead, in town—in Brigham City; that the appellant was the one who paid him for his services in attending the sick daughter; that these women were all known in Brigham City in 1884 as appellant's wives; that the first time he saw appellant at Sarah's house the appellant left before he did, but the next time he went away leaving the appellant there. Dr. Carrington also says that he saw appellant and Sarah out riding in the same conveyance in August, 1884, going with their little daughter from Little Valley. The appellant must have remained in Little Valley with Sarah, looking after their sick daughter, two or three days—for appellant was at the house in the valley when the doctor went there—the child was kept there two or three days—and then appellant is seen with Sarah taking the child away. Sarah, no doubt, was in 1884 at the birthday party spoken of—as also the other women. Taking these facts in connection with the facts of recognition by him and all the family and the community of Sarah as well as the others as his wives would seem sufficient to justify the jury in concluding

that during 1884 the appellant cohabited with Sarah. It was not necessary that she or any other of these women should "keep a room" for him. He was not far away from any of them. He was in the same village and none of them more than two blocks from him. It were possible for him to withdraw himself from his first wife and from the old homestead, and take up his headquarters in the center of a block, and do his eating and sleeping there, and from such headquarters give out his general orders and essay wherever he chose to do so to visit amongst his various households, and the world would have no knowledge of his doings. All the opportunties of the marital relations with these women would be open to him, and the whole community are his friends and approve the polygamic system, and have no wish to look too closely into the precise course of conduct he is or might be pursuing toward or with his numerous wives and their households. We say the whole community from the fact that all of these Mormon villages are thus friendly to the polygamists and to the system itself. This is a well-known fact, too notorious to be denied. Would not a man so living be cohabiting with all the women he was thus maintaining and supporting and holding out as wives? We think the conclusion is inevitable that he would. He could be the head of each and all of these diverse establishments and they would be all one "Snow family."

But there were other women besides Adeline and Sarah to be visited and looked after. As these two were old and stricken in years and had lost their charms for him measurably, he betakes himself to his newest and last woman whom he had gathered to his fold. Minnie was the last one to whom he was married. She testified that in 1884 appellant made his home with her, that he ate there and slept there, and that she had three children by him, the youngest being but three months old when the trial took place; that he supported her; that his office was at her house and his mail was received there, and that he transacted most of his business there. But all of his time and attention could not be given to Minnie and Sarah and Adeline; there were others, and among them Harriet, whom he had married nearly forty years ago at Nauvoo, and she and appellant had never been divorced. She could not tell postively that he visited her in 1884 (this confining of the testimony to the year 1884 seems to have thrown the memories of some of the witnesses clear out of reckoning —they could not separate 1884 from the other years and confine themselves to it.) She says that appellant might have come in during 1884; she could not be positive as to that; they met as friends and he called as a friend. She resides at the old homestead; that she was at his birthday party before spoken of.

Lucius Snow, a son of the appellant and Harriet, saw him in 1884, with Harriet, at the farm, two miles out of town; that appellant brought her out there and took her away.

The evidence is that he supported her, recognized her as wife, and she was so recognized by the family and community and by him.

Eleanor was another of these women to whom he had been married, whom he recognized and supported as such. She resides at

the old homestead—has lived there 35 years; that he might have called on her socially in 1884—the witnesses generally seem to think he might have called on them. The presumption is that he did call—generally on them—as part and parcel of his general superintending care over them. But Harriet says he did not dine or sleep at her house in 1884; that if he did call it was to see the children. She was known by all as one of his wives.

Mary was another of his polygamic women. She was married to him thirty years ago—that she used to live at the old homestead, but removed from there eight years ago and now lives by herself, with her children, and has so lived since she moved from the old homestead. Appellant provides for all her wants; he did not eat or sleep in her house in 1884, but he called as any other gentleman friend and nothing more. All of these women were recognized by him and the public as his wives. He seems to probably have called a goodly number of times on these different women in 1884. We have the right to infer that he was looking after the interests of these various households as any man looks after his household. We are not told what he said on these visits but the natural conclusion is that the talks had regard to family matters which he was looking after and that no doubt caused his visits. Besides, his calling may not have been as frequent as in other years, simply because he was out of town a large part of the year and had too many women to allow any great attention to any except a favorite.

The jury, in ascertaining whether the appellant was guilty or not, had the right to take into consideration his concealment at the time of arrest and also the manner of concealment.

From all the facts shown we do not think the verdict could have been otherwise, and we do not think it is contrary to the evidence.

The evidence that he cohabitated with Adeline, Sarah, and Minnie is stronger than the evidence as to the other women; yet there is evidence also in regard to these others. If the case be deemed one of conflict of evidence,we are not authorized to reverse on the ground of insufficiency of the evidence.

The People *vs.* Forsythe, 65 Cal., 101.

In reaching the conclusion we have in regard to the sufficiency of the evidence, we have endeavored to carry out what we believed, and what the United States Supreme Court says, is the object of the Edmunds act. If polygamy be the marrying of more women than one and unlawful cohabitation is the outward semblance—the pretending to be in polygamy—the holding out of more than one woman as wife and flaunting all the opportunites of a polygamous household in the face of the world, then this case is clearly made out, but it is otherwise if a living, staying, dwelling, eating, sleeping, and lodging in each house must be shown by direct proof, and the law fails in its object, and it will be a vain and a fruitless effort to destroy the outward semblance of pologamy—the ostentatious display of the polygamic relation—without additional legislation. The shrewd and cunning polygamist can easily evade the law as it stands without an interpretation.

It is further urged that the court erred in its charge to the jury in giving the following instruction, viz: "If you find beyond a reasonable doubt that the defendant had, during the year 1884, a legal wife living in Brigham City, Box Elder county, Utah Territory, from whom he was undivorced, that he recognized her as his wife, held her out as such, and contributed to her support as such wife, and that during the same year he lived in the same house with the woman Minnie, recognizing her as his wife, associated with her as such, and supported and held her out as a wife, then the offense of unlawful cohabitation is complete and you will find the defendant guilty. The legal wife in this case is the one whom the defendant first married."

It is claimed that this instruction took the case from the jury—that it told the jury to convict without any proof of the "living together." It is said that if there was a presumption of fact the jury should have been told, that they might from the evidence draw the conclusion of fact, but that the jury should not have been told as a matter of law to convict. We are referred to two cases to support this position. The case of the People *vs.* Walden (51 Cal., 588), cited by the appellant, was an election case, and the defendant was charged with having changed the ballots. He had a key said to fit the lock of the place where the ballots had been deposited. The court charged the jury that the possession of the key unexplained raised a reasonable presumption that defendant had the key for the purpose of using it to open that lock. It was the court and not the jury presuming one fact from another, and the court said it was charging the jury "with respect to matter of fact," in contravention of the State constitution, and was held wrong. The court below in that case invaded the province of the jury, telling them that if they found one fact they were to presume another necessary fact to exist. Nothing of the kind appears in the case at bar. Here the court tells the jury that if they find certain facts to exist those facts are enough to make the proof of the offense complete and they should convict.

The case of the State *vs.* Geyser (52 Cal., 315), was in regard to abandonment of a mining claim; and the court told the jury that if they found certain facts they were authorized to find a certain other fact—the fact of abandonment. The question of abandonment was one of the facts—the ultimate facts that had to be found by the jury—upon which to base their verdict. It was probably improper for a court to tell the jury to presume from one of those facts that another exists. But that would be very different from telling the jury that certain facts when found complete the proof of the crime charged. One of the facts necessary to make out the offense was not authorized to be drawn from the existence of another fact which had been proved, but all together make out the crime charged.

The form of the instruction is not unusual.

State *vs.* Levijue, 17 Nev., 435.
Miles *vs.* State, 14 Tex. App., 436.

The material point about such an instruction is whether the facts detailed by the court would make the offense complete. In

the first language we quoted from the Supreme Court of the United States, in Cannon *vs.* United States, the idea is conveyed that the "holding out" of marriage was the gist of the offense. With the opinion in that case before it, the lower court would very naturally follow in the same line of reasoning by giving the instruction now objected to. The holding out of these women is shown by the appellant having married them all and not dissolved such relation; that he supports them as his wives, not as women only; that he associates with them and he declares them to be his wives; that he visits them, looks after each, takes them out riding, stops with them in the country, takes oversight of each family and keeps them in houses easy of access, and where his visits would attract no attention, allowing them to be known as his wives and to go by his name in the community, together with the strong presumption in favor of the first wife. His intention is based upon such facts, and, like every other instruction in any case, it is intended to suit the facts proven.

The instruction, therefore, was not erroneous when it told the jury, in effect, that the proof as to Adeline was sufficient if they found that she was the first wife and had never been divorced from him; that he recognized her as his wife, held her out as such, and contributed to her support as such wife.

The appellant assigns also as error the sustaining of the demurrer to his plea of former conviction. This is probably the most important point in the case, and, as applied to an indictment of this character, one upon which there is not an abundance of authority either for or against it.

41 This indictment is for the year 1884. In addition to the plea of not guilty, the appellant entered a plea of former conviction in the case, covering the year 1885, in bar of this action. To this plea of former conviction the Government demurred, and the demurrer was sustained. In assigning this action of the court as error, the appellant cited several authorities. The case of Sturgis *vs.* Spofford (45 N. Y., 446), cited by him, was an action to recover certain penalties for a violation of the following statute of the State of New York, viz: "All persons employing a person to act as pilot not holding a license under this act or under the laws of the State of New Jersey shall forfeit and pay to the board of commissioners of pilots the sum of $100." By this statute the offense consists in the employment, and not in the piloting of ship or other vessels.

The case of Fisher *vs.* N. Y. and H. R'y (46 N. Y., 644) is somewhat more similar to the case at bar. A statute of New York provided that any railroad company which should ask and receive a greater rate of fare than that allowed by law should forfeit $50, which sum might be recovered, together with the excess so received, by the party paying the same.

The plaintiff in that action had taken passage for a very short distance on the road of the defendant's company, and repeated his passage 26 times, and paid 34 cents for each of the passages. These 34 cents were in excess of what the law allowed. The plaintiff made such passages solely with the view of getting the penalty. The plaintiff did not bring a separate suit for each passage, but waited

until he had made 26, and then in one action sued for the penalty on each of the passages. The court said that the $50 was not intended as a satisfaction for the injury, but to enable the party defrauded to prosecute his case in court and to pay the expense of suit; that a construction permitting the penalties for a number of infractions of the law to be united and all the penalties be recovered would not be favored; that it would defeat the object of the law, which was to suppress the extortion by prompt prosecutions. Besides, the plaintiff in that case frankly admitted that he had abandoned other business and made those short trips in order to get the penalties. By uniting them in one suit he could avoid the expense of more than one suit. The court said that the penalty was intended to be sufficient to cover the expense of one suit, and not to be a profit to the party, and as he had made but one suit he was entitled to but one penalty.

The case of the State *vs.* Commissioners (2 Murphy, 371), cited in 5 Parker's Cr. R., 72, was a case where the commissioners were required to keep the streets in order. It was sought to indict them for each of a variety of streets which were out of repair, but the court said: "The defendants are bound to keep all the streets in repair, and are liable for indictment for every neglect of their duty, but if more than one street is out of repair at the same time this does not multiply the offenses." That case might be analogous to the present one at bar, if these cases against the appellant were all for the same year, but for different infractions of the law at the same time.

The case of the Mayor, etc., *vs.* Ordrenan (12 Johns., 122) was an action of debt to recover penalties aggregating three thousand dollars, under a special special statute in regard to keeping gunpowder in the city of New York and authorizing its regulation, and "to impose penalties for the non-observance of the same not exceeding two hundred and fifty dollars." The city, in pursuance of this statute, passed an ordinance which, amongst other things, required a forfeiture of $125 for every *one hundred pounds* of powder kept in violation of the ordinance. The defendant in that case was charged with having kept *twenty-four hundred* pounds in the city in violation of the ordinance, and judgment was asked against him for *three thousand dollars;* but the court said: "The act, in authorizing the imposition of penalties for the non-observance of by-laws to be passed and in restraining the penalty to $250, clearly manifested an intention on the part of the law-makers that no more than that sum should be exacted as a penalty for *any one offense*, or for the violation of the by-laws in any transaction. Should a different construction prevail, the limitation in the amount of the penalty would be nugatory, and penalty to the amount of 250 dollars might be repeated, not upon the offense itself, but upon the quantity of the offense." There was but one offense, and the amount of the powder could not make it otherwise. The city was not authorized to impose a penalty for any particular amount, but simply for each offense, whether the amount kept was one pound or a thousand pounds beyond the limit.

We do not see that the case bears upon the question before us in the present case.

The case of the State *vs.* Nutt (28 Vt., 598) was one where the defendant had been convicted of being a common seller of intoxicating liquors without license and was afterwards indicted for making a single sale during the time covered by the indictment in the first case. The court said that "The several sales are constituted parts of one offense, and one, too, of a different character, when measured by the penalty, from that of a single act of sale." The defendant should not be convicted twice for making the same sale—but had not his plea been upheld he would have been. There is no similarity between that case and the one we are now considering.

In the case of State *vs.* Eggleshot (41 Iowa, 574), reported in 20 Am. Reps., p. 612, and also cited by the appellant, was a case where the defendant delivered at the same time and by the same act to the teller of a bank four forged checks, purporting to have been drawn by different persons. The court held the uttering of the four checks was one act and constituted but one offense, and that, as a consequence, a conviction for uttering one of the checks was a bar to a conviction for uttering the others. If the indictments against the appellant were for the same year but for different infractions of the statute this case would be in point. But as the indictments stand they are for different years, and the offense for one year could not be classed as the offense of another year.

In the case of the Commonwealth *vs.* Robinson (126 Mass., 259) the complaint charged the defendant with keeping a tenement used for the illegal sale and illegal keeping for sale of intoxicating liquors on Jan. 1st, 1878, and on divers other days and times between that day and August 20th, 1878. The defendant plead an acquittal on a complaint charging the defendant with keeping and maintaining a tenement for the illegal sale and illegal keeping for sale of intoxicating liquors on January 1, 1878, and down to May 1, 1878, and that the tenement alleged in the first complaint was the same as was alleged in the second. Both complaints include the time from January 1st to May 20th of the same year. The court held the plea of former acquittal, if established, to be a bar to the second prosecution, for the reason that the same evidence would be required to convict in both cases. The court said that the principles which govern it are, however, quite well settled—that the question is fully discussed in Morey *vs.* Commonwealth (108 Mass., 438), where the chief justice of that court reviewed the whole subject, referred to the leading decisions bearing upon the question, and said: "A conviction or acquittal upon an indictment is no bar to a subsequent conviction and sentence upon another, unless the evidence required to support a conviction upon one of them would have been sufficient to warrant a conviction upon the other."

In the case of the Commonwealth *vs.* Connens (116 Mass., 35) the court held that a conviction under the general statute of the State (chap. 87, sec. 7) for maintaining a certain tenement on a day certain and divers other days between that day and a day certain for the illegal keeping and sale of intoxicating liquors was not a bar to

an indictment found at the same session of the grand jury for maintaining the same tenement for the same purpose on the last day named in the first indictment and on divers other days between this day and another day certain. This last case appears to
42 be directly in point, and we are of the opinion that it supports the ruling of the lower court in the present case on the point under discussion. It is the only case we have seen which squarely meets the issue, and it sustains the ruling of the court below in the case at bar. Coming as it does from the very able and highest court in one of the oldest Commonwealths of our Union, it commands respect and consideration, and we have no hesitancy in following it. We therefore find that the court below, in the present case under consideration, committed no error in sustaining the demurrer to the plea of former conviction interposed by the appellant.

Upon the whole case, therefore, we do not think that the court below committed error. The decision of the court is affirmed.

Powers, J., concurs.
Zane, C. J., dissents.
Filed Feb'y 13, 1886.

E. T. SPRAGUE, *Clerk.*

ZANE, *C. J.*, dissenting:

I dissent from the judgment of the court. The evidence showed that Adeline (a woman named in the indictment) was defendant's lawful wife without showing that during the time mentioned therein he was ever in her company or ever spoke to her or she to him. The court charged in substance if the jury believed that the defendant during the time mentioned in the indictment had a lawful wife living whom he recognized and held out as his wife and contributed to the support of, and that during the same time he lived and associated with and recognized and supported another of the women named as his wife, the offense of cohabitation was complete and that the jury should convict. I think it essential to cohabitation with defendant's lawful wife that he should have been in her company some part of the time mentioned in the indictment. Association together to some extent is an element of the crime of cohabitation as defined in the Edmunds law. It is not sufficient that a man and his lawful wife should live in the same neighborhood or the same city. Nor do I think that cohabitation is conclusively presumed with the lawful wife from the facts mentioned. There was other evidence tending to show that defendant did not cohabit with his lawful wife. The jury should have been left at liberty to find the fact of cohabitation with the lawful wife from the facts mentioned, considered with all the other evidence bearing upon it.

I concur with so much of the opinion of the court as holds that more than one indictment for unlawful cohabitation may be found by the same grand jury for different periods against the same defendant.

Filed Feb'y 13th, 1886.

E. T. SPRAGUE, *Clerk.*

43 TERRITORY OF UTAH, } ss:
Salt Lake County, }

I, Ezra T. Sprague, clerk of the supreme court of said Territory of Utah, do hereby certify that the annexed and foregoing is a full, true, and correct copy of the record, proceedings, and opinion in and of said court in the cause therein entitled, and of dissenting opinion of the chief justice therein, on file or of record at my office.

In testimony whereof I have hereunto set my hand and the seal of said court this 20th day of February, A. D. 1886.

[Seal Supreme Court, Territory of Utah, United States of America.]

E. T. SPRAGUE, *Clerk.*

44 *Conviction for Unlawful Cohabitation in* 1884.

Supreme Court, Territory of Utah.

UNITED STATES *vs.* LORENZO SNOW.

To the Hon. C. S. Zane, chief justice of said court:

The petition of Lorenzo Snow respectfully shows:

That in this court a final judgment was recently rendered, affirming the judgment of the district court of the first judicial district of said Territory, by which your petitioner was convicted and sentenced for the crime of unlawful cohabitation in the year 1884.

The full record of such conviction, sentence, and the judgment of affirmance in this court, duly certified by the clerk thereof, is annexed and herewith presented, and from which it will appear that your petitioner was convicted on an indictment under section 3 of chap. 47 of the laws of the United States, approved March 22d, 1882.

That in said case there was drawn in question the validity of said statute as applied to the case of your petitioner and the construction and authority thereof.

And your petitioner further shows that various errors, prejudicial to him, in the construction of said statute, and in holding the same valid as an authority for the conviction of your petitioner intervened in said case, and he now assigns the following errors on said record, to wit:

Assignment of Errors.

1st. The court erred in holding the evidence sufficient to constitute an offense under said statute.

45 2d. The court erred in holding the defendant could not show there had been no sexual intercourse between him and women with whom he was charged with cohabiting.

3d. Court erred in sustaining the refusal to instruct the jury, as prayed by the defendant, in the following requests, separately prayed, to wit:

Defendant's 2d request. The term "cohabit" means "live with" or "dwell with," and in the act under which the defendant is indicted it means to live with as wives.

Defendant's 3d request. To constitute "cohabitation" there must

be such a frequency or regularity and manner of association of a man and woman as to amount to a "living together," and distinguish the association from mere visits, and, so long as there is not a "living together," occasional visits do not amount to cohabitation.

Defendant's 4th request. The defendant, though living with one wife, could lawfully visit another and her children at reasonable times and for lawful purposes; and the purposes of inquiring concerning the health and welfare of such other wife and his children by her, of providing for their support, and the education, employment, and business of the children would be lawful. He is not required by law to break off friendly relations with any of his wives, and may attend friendly or social or religious meetings at their houses.

Defendant's 5th request. Having more than one wife and claiming and introducing more than one woman as wives do not constitute the offense charged. You must find, to justify a conviction, that he has lived with more than one within the time stated in the indictment.

46 Defendant's 6th request. The law assumes the defendant innocent until he is proven guilty beyond a reasonable doubt, and his guilt or innocence is to be determined by you, and what others or the public may have believed, or had reasons to believe, from his manner of living is not the issue, but you are to say from the evidence whether or not he did in fact live with more than one woman, as charged.

Defendant's 7th request. The defendant was not required to give any notice, public or otherwise, of his manner of life or his purposes, or whether he was or was not abstaining from cohabiting with more than one woman, and it is a sufficient defense if you find from the evidence that it is not shown, beyond a reasonable doubt, that he in fact did live or cohabit with more than one.

Defendant's 8th request. It is immaterial whether or not there was any change of conduct toward or of relations with his wives at the time of the passage of the Edmunds law, if at and prior to that time he was not violating the provisions of the act relating to cohabiting with more than one woman; and if in 1884 he has not so cohabited he is innocent of the present charge, whether such innocence is the result of a change of relations with his wives or the result of a maintenance of former relations.

4. There is error in sustaining the several clauses of the charge to the jury, to each of which clauses the defendant excepted, to wit:

(*a.*) "It is not necessary that the evidence should show that the defendant and these women, or either of them, occupied the same bed, slept in the same room, or dwelt under the same roof;

47 neither is it necessary that the evidence should show that within the time mentioned in the indictment the defendant had sexual intercourse with either of them."

(*b.*) "The question is, were they living in the habit and repute of marriage? The offense of cohabitation is complete when a man, to all outward appearances, is living or associating with two or more women as wives. If the conduct of the defendant has been such as

to lead to the belief that the parties were living as husband and wife live, then the defendant is guilty."

(*c.*) "Of course the defendant might visit his children by the various women; he may make directions regarding their welfare; he may meet the women on terms of social equality; but if he associates with them as a husband with his wife, he is guilty. The Edmunds law says there must be an end of the relationship previously existing between polygamists. It says that the relationship must cease."

(*d.*) "If you find beyond a reasonable doubt that the defendant had during the year 1884 a legal wife living in Brigham City, Box Elder county, Utah Territory, from whom he was undivorced; that he recognized her as his wife, held her out as such, and contributed to her support as such wife, and that during the same year he lived in the same house with the woman Minnie, recognizing her as his wife, associated with her as such, and supported and held her out as a wife, then the offense of unlawful cohabitation is complete, and you will find the defendant guilty. The legal wife in this case is the one whom the defendant first married."

48 Wherefore your petitioner prays the allowance of a writ of error to the said court removing said case to the Supreme Court of the United States.

LORENZO SNOW,
Per F. S. RICHARDS, AND
BENNETT, HARKNESS & KIRKPATRICK,
Attorneys.

49 [Endorsed:] Case 743 Supreme court, Utah Territory. United States *vs.* Lorenzo Snow. Petition for writ of error and assignment of errors.

A writ of error herein is allowed, and a citation will be issued on filing the usual bond in the sum of two hundred and fifty dollars. Dated February 23d, 1886. Charles S. Zane, chief justice sup. court of Utah.

50 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the supreme court of Utah Territory and the honorable the judges of said court, Greeting:

Because in the record and proceedings and also in the rendition of the judgment in the supreme court of the Territory of Utah, being the highest court of law and equity of the said Territory in which a decision could be had, in a certain case wherein the United States were the plaintiff and respondent and Lorenzo Snow was the defendant and appellant, wherein was drawn in question the construction, effect, and validity of a statute of the United States, manifest errors have happened, to the great damage of the said Lorenzo Snow, as by his complaint and the said judgment record appears, we being willing that error, if any hath been, shall be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings

aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next in the Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

51 Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, the 23d day of February, 1886.

[Seal Supreme Court, Territory of Utah, United States of America.]

E. T. SPRAGUE,
Clerk of the Supreme Court of Utah Territory.

Allowed by—

HON. C. S. ZANE,
Chief Justice of the Supreme Court of Utah.

[Endorsed:] Case 743. United States *vs.* Lorenzo Snow. Writ of error.

52 The United States of America to the United States of America, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the office of the clerk of the supreme court of Utah Territory, wherein Lorenzo Snow is the plaintiff in error and you are the defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness my hand this 24th day of February, A. D. 1886.

C. S. ZANE,
Chief Justice of the Supreme Court of Utah Territory.

53 [Endorsed:] Case 743. Lorenzo Snow, pl'ff in error, *vs.* United States, def't in error. Citation.

A copy of the within citation was personally served on me Feb'y 24, 1886. W. H. Dickson, U. S. district att'y for Utah.

54 Know all men by these presents that we, James Sharp and John R. Winder, both of Salt Lake City, in the county of Salt Lake and Territory of Utah, are held and firmly bound unto the United States of America in the full and just sum of two hundred and fifty dollars, to be paid to the United States of America, their certain attorneys or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Whereas lately, at the January term of the supreme court for the Territory of Utah, in a criminal suit depending in said court be-

tween the United States and Lorenzo Snow, judgment was rendered against the said Lorenzo Snow, and he having obtained a writ of error and filed a copy thereof in the clerk's office of said court to reverse the judgment in the aforesaid suit, and a citation directed to the said United States citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next:

Now, the condition of the above obligation is such that if the said Lorenzo Snow shall prosecute his said writ to effect and answer all damages and costs if he shall fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

February 24, 1886.

JAMES SHARP. [SEAL.]
JOHN R. WINDER. [SEAL.]

55 [Endorsed:] Case 743. Lorenzo Snow, pl'ff in error, *vs.* United States, def't in error. Bond on appeal. (Copy.)

The within bond is approved. February 24, 1886. C. S. Zane, chief justice sup. c't, Utah Territory.

56 TERRITORY OF UTAH, } *ss:*
County of Salt Lake, }

I, E. T. Sprague, clerk of the supreme court of said Territory of Utah, in obedience to the writ of error hereto attached, do return annexed hereto said writ, the petition therefor, the allowance thereof, assignment of errors, the citation thereon issued, with proof of service thereof, and a transcript of the record and proceedings, opinion, dissenting opinion of chief justice, and bond on writ of error—all in and of said court, in the cause in said writ described—to the Supreme Court of the United States; and I hereby certify that said transcript of the record, proceedings, opinion, dissenting opinion, and bond is a true, full, correct, and complete copy of the several originals thereof on file or of record in my office.

In witness whereof I have hereunto set my hand and affixed the seal of said supreme court of Utah Territory, at Salt Lake City, this 24th day of February, A. D. 1886.

[Seal Supreme Court, Territory of Utah, United States of America.]

E. T. SPRAGUE, *Clerk.*

Endorsed on cover: Utah Territory supreme court. No. 1279. Lorenzo Snow, plaintiff in error, *vs.* The United States. Filed March 2, 1886.

118-346

Supreme Court of the United States.

OCTOBER TERM, 1885.

LORENZO SNOW,
PLAINTIFF IN ERROR,
v.
THE UNITED STATES,
DEFENDANT IN ERROR.
No. 1,278.

LORENZO SNOW,
PLAINTIFF IN ERROR,
v.
THE UNITED STATES,
DEFENDANT IN ERROR.
No. 1,279.

LORENZO SNOW,
PLAINTIFF IN ERROR,
v.
THE UNITED STATES,
DEFENDANT IN ERROR.
No. 1,277.

Brief for Plaintiff in Error.

GEORGE TICKNOR CURTIS,
FRANKLIN S. RICHARDS,
Counsel for the Plaintiff in Error.

WASHINGTON:
GIBSON BROS., PRINTERS AND BOOKBINDERS.
1886.

Supreme Court of the United States.

OCTOBER TERM, 1885.

LORENZO SNOW, PLAINTIFF IN ERROR, *v.* THE UNITED STATES, DEFENDANT IN ERROR.	*No.* 1,278.
LORENZO SNOW, PLAINTIFF IN ERROR, *v.* THE UNITED STATES, DEFENDANT IN ERROR.	*No.* 1,279.
LORENZO SNOW, PLAINTIFF IN ERROR, *v.* THE UNITED STATES, DEFENDANT IN ERROR.	*No.* 1,277.

Brief for Plaintiff in Error.

STATEMENT.

The plaintiff in error, on separate trials, was convicted in the District Court of the First Judicial District of Utah

Territory on three indictments for unlawful cohabitation, and the judgments, each for the highest punishment allowed by law, were affirmed by the Supreme Court of the Territory, and he is now imprisoned in execution of the same. The indictments are found under section 3 of chapter 47 of an act of Congress approved March 22d, 1882, which reads as follows:

"SEC. 3. That if any male person in a Territory or other place over which the United States have exclusive jurisdiction hereafter cohabits with more than one woman he shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not more than three hundred dollars, or by imprisonment for not more than six months, or by both said punishments, in the discretion of the court."

One indictment charged cohabitation with seven women in 1883; another charged cohabitation with the same women in 1884, and the third charged cohabitation with the same women during the eleven first months of 1885. The trials occurred in the inverse order of the time covered by the indictments, commencing with the indictment for 1885, and the numbers in this Court do not correspond with the order of trial.

The questions in the first case tried (No. 1278) involve the construction and effect of the section of the act of Congress cited above and what constitutes an offence under it, also the evidence admissible to prove it, and the manner in which the questions involved were submitted to the jury. The questions arise out of objections to the sufficiency of the evidence under said statute, objections and exceptions to the admission and exclusion of evidence, and to instructions given to the jury and requests for instructions refused.

The other cases involve the same questions, arising in

the same way, and each of them also involves two additional questions of general importance, to wit:

1st. Where the alleged cohabitation has been continuous and at the same place and with the same women, can the cohabitation be divided into separate offences marked only by an arbitrary division of the time?

This question arises on the ruling of the court sustaining a demurrer to pleas of the first conviction, and of the first and second convictions, in bar to indictments in the second and third cases respectively.

2d. Is the offence of unlawful cohabitation with more than one woman committed by cohabiting with a woman not a lawful wife, and at the same time having a lawful wife living with whom there is no cohabitation; and if there is a presumption of cohabitation with the lawful wife, is it indisputable and incapable of being rebutted?

This question arises on an instruction to the jury in the second and third cases, hereafter set out in full.

Alleged errors in case No. 1278 will be first noticed, and such differences as exist in the other two cases can afterwards be briefly pointed out.

ERRORS ASSIGNED IN NO. 1278.

Insufficiency of the evidence to support a conviction under the statute.

Admitting, on the trial for cohabitation in 1885, evidence of cohabitation with the same women in 1883, 1884, and prior thereto, when separate indictments for 1883 and 1884, were pending before the court.

Excluding evidence that no sexual intercourse had taken place with any of the women except one.

Refusing to instruct the jury as prayed by the plaintiff in error in his several requests numbered from two to eight inclusive.

Instructing the jury in the several portions of the charge to which exceptions were taken and which will be set out hereafter.

Overruling the motion of plaintiff in error for a new trial.

Rendering three separate judgments in the same case, each for the maximum penalties provided by law.

I.

Insufficiency of the evidence to support the conviction.

The whole record shows an utter absence of evidence of cohabitation with any woman except Minnie, and discloses the fact that the defendant lived exclusively with her and made his home at her house during the entire time charged in the indictment. This point need not be elaborated here as further argument will be made upon this branch of the case in considering other points with reference to the evidence.

II.

Admitting on the trial for cohabitation in 1885 evidence tending to show cohabitation with the same women in 1883, 1884, and prior thereto, when indictments for 1883 and 1884 were pending before the court.

The evidence so admitted begins on page 8 of the transcript, and extends through the entire case, and includes a comparison of the manner of living in the year 1885 with the manner of living prior thereto.

In objecting to the evidence the attention of the court was called to the indictments for 1883 and 1884, and the court held that it would take judicial notice of them and not require them to be offered in support of the objection. (Transcript, p. 8.)

The evidence was not only admitted, but the judge charged the jury as follows:

"If there is evidence that the defendant had married the women, had been living with them as his wives before the offence, it may be considered by the jury as adding weight to any circumstances proven, pointing to unlawful cohabitation during the time the offence is charged." (Transcript, p. 23.)

The statute, under which the plaintiff in error was indicted, has been construed to mean a cohabitation with more than one woman as wives, or under the claim or color of a marriage relation. There were two things for the prosecutor to prove: the claim or color of a marriage relation, and the cohabition—the latter being the body of the offence, the former only relating to the status of the person committing it. It is not disputed that, as to such status of the person, evidence would be proper covering any number of years, though separate indictments were pending, and that such evidence would violate no rule of law. The plaintiff in error, at the opening of the trial, admitted the status and the "holding out" of the women as wives in the broadest terms, as this quotation from the record shows: "The defendant by his counsel admitted before the court and jury that he had been married to all the women named in the indictment, the last marriage being in 1871, and that he never was divorced from either; and ever since the respective marriages has claimed each of said women as his wife, but did not admit that he had cohabited with more than one of them during any part of the time charged in the indictment." (Transcript, p. 7.)

This reduced the issue to proof of the cohabition during the time charged, and gave the prosecutor no excuse for offering evidence of prior cohabitation to show the status of the parties, or the "holding out" as wives.

The general rule that, to aid in convicting a person of one offence, the commission of another, though a like offence cannot be shown, is well settled. The exceptions to the rule do not relate to the proof of the fact or act constituting the offence, but only to the questions of knowledge, purpose, malice or intent, where such things characterize the act and are necessary to make it criminal or to enhance its criminality.

State *v.* Goetz, 34 Mo., 85.

Coleman *v.* People, 55 N. Y., 81.

1 Bishop's Crim. Proc., 3d Ed., Secs. 1120, 1123.

The court not only admitted the evidence as tending to prove the only fact in issue, but distinctly charged the jury that they might so consider it. The usual test as to whether one action or prosecution is a bar to another is whether the same evidence would prove or tend to prove each case. Here there were separate indictments for 1883 and 1884, for the same acts which were proved to procure a conviction for 1885.

III.

The exclusion of evidence that no sexual intercourse had taken place with any of the women except one.

This Court has decided that proof of sexual intercourse need not be made by the prosecutor and is not essential to the offence. It has been held, however, that the prosecutor may prove it, if he can, and proof of the birth of children in Utah is taken as evidence of cohabitation.

In the Cannon case (116 U. S., p. 71,) it was held not to be error to exclude proof of non-sexual intercourse. We understand that ruling is not based on the idea that the proof is immaterial in all cases, but that the admitted facts in the Cannon case *constituted cohabitation irrespec-*

tive of the fact of sexual intercourse, and that the admission of the evidence could not have helped the defendant's case, and its exclusion could not injure it.

In this case there were no such conclusive facts. The plaintiff in error had not lived in the same house with more than one woman. He claimed, and the evidence showed, that he had merely *visited* and had not lived with more than one, and it was a question of fact for the jury whether those visits were made in good faith and for the purposes claimed by the plaintiff in error, or whether they were in fact a living or cohabiting with the women. It was therefore proper for the plaintiff in error to show to the jury the character of those calls or visits, what occurred and what did not occur, and especially that no such decisive act took place as would convert the visits into a cohabitation. The nature of the visits and the purpose for which they were made were involved, and from the admission that the women were his wives the jury may have drawn unfavorable inferences as to what occurred. A reference to the testimony will show that there was no evidence from which the Court, as a matter of fact and law, could say there had been cohabitation, but that the jury must pass upon the question, and it is submitted that the Court erred in applying the decision in the Cannon case.

IV.

The court erred in refusing instructions asked by the plaintiff in error, as follows:

Second Request. "The term cohabit means 'live with' or 'dwell with,' and in the act under which the defendant is indicted means to 'live with as wives.'"

Third Request. "To constitute cohabitation there must be such a frequency or regularity and manner of associa-

The third affirmative definition seems clearly erroneous: "If the conduct of the defendant has been such as to lead to the belief that the parties were living as husband and wife live, then the defendant is guilty."

The issue was whether the plaintiff in error had in fact cohabited with more than one woman, and this fact was to be found beyond a reasonable doubt. The defendant asked the court to say to the jury that the parties must have lived together. The court says if the jury find that some one may have been led to that belief it is enough, but it does not say who is to be led to that belief. If it be interpreted to mean that the jury must be led to the belief, it is still erroneous and would mean "if you find you are led to this belief by the evidence the defendant is guilty."

Fourth Request. "The defendant, though living with one wife, could lawfully visit another and her children at reasonable times and for lawful purposes, and the purposes of inquiring concerning the health and welfare of such other wife and his children by her, of providing for their support, and the education, employment, and business of the children would be lawful. He is not required to break off friendly relations with any of his wives and may attend friendly or social or religious meetings at their houses."

This request met every aspect of the evidence in the case and the defendant's claim of the purposes of his visits. If he can visit a plural wife at all, we submit that it should have been given.

No equivalent instruction was given, but the jury was instructed as follows, and the plaintiff in error excepted:

"Of course the defendant might visit his children by the various women, he may make direction regarding their welfare, he may meet the women on terms of social equality,

but if he associates with them as a husband with his wife he is guilty. The Edmunds law says there must be an end to the relationship previously existing between polygamists; it says that relationship must cease."

The Fourth Request asked the Court to say that the plaintiff in error might visit his wives. There is no answer to this request in the charge. The jury were told that he might visit the *children* but there was no charge of cohabiting with them. They were also told that he may "meet the women on terms of social equality." This implies nothing more than that both may be guests at a friend's house or may meet on the street or in any public place, and the term "meet" includes and would be understood to mean a casual meeting, and not an intentional one, while the term visit would mean an intentional going to see the very person visited; and it was to this view that the request was directed. What language could be more misleading and delusive than the expression: "If he associates with them as a husband with his wife he is guilty?"

Fifth Request. "Having more than one wife and claiming and introducing more than one woman as wives do not constitute the offence charged. You must find, to justify a conviction, that he has lived with more than one within the time stated in the indictment."

The prosecution had given evidence that when the plaintiff in error was under arrest in the U. S. Marshal's office, and three of the women were there under subpœna, he had introduced the three women as his wives; and the attention of the jury was nowhere called to the distinction between evidence of the status and the fact of cohabitation, and the ambiguous manner in which the jury was instructed tended to mislead them as to what constituted the offence and to induce them to give undue importance to the

relation of the parties. It is submitted that the request is fair, meets the issue before the jury, and should have been given.

The only answer to the request is found in the clauses of the charge already quoted, that "*the Edmunds law says there must be an end of the relationship previously existing between polygamists. It says that relationship must cease.*"

It is submitted that the giving of this instruction was gross error. The "Edmunds law," as construed by this Court, does not say that "there must be an end to the relationship previously existing between polygamists," nor that "that relationship must cease." But, on the contrary, this Court, in construing that statute, in the case of Murphy *v.* Ramsey, (114 U. S., 43,) expressly negatives that idea in the following language: "The crime and offence of bigamy or polygamy * * * consists in the fact of unlawful marriage. * * * Continuing to live in that state afterwards is not an offence, although cohabitation with more than one woman is."

This instruction left the jury to infer that there must be some measures taken to sever the "relationship," and that a man could not admit that the relationship of husband and wife existed without being guilty. We submit that the Court misinterpreted the law. That law punishes the offence of polygamy and the offence of living with more than one woman as wives; and if the old relationship or status, as distinguished from some new affirmative offence is maintained, the polygamist cannot vote. In a prosecution for unlawful cohabitation, we submit that it is gross error to use language from which the jury must have understood that the maintenance of the *relationship* was the gist of the offence. This adopted the theory that the "holding out" as wives was the gist of the offence and vir-

tually declared that the polygamous status itself was criminal.

The plaintiff in error, Mr. Snow, had admitted the relationship, and the jury undoubtedly understood from this part of the charge that upon such admission they were directed to convict.

People *v.* Williams, 17 Cal., 148.

Sixth Request. "The law assumes the defendant innocent until he is proven guilty beyond a reasonable doubt, and his guilt or innocence is to be determined by you, and what others or the public may have believed or had reason to believe from his manner of living is not the issue, but you are to say from the evidence whether or not he did in fact live with more than one woman as charged."

We can see no objection to the terms of this request, or its fairness or correctness. The only criticism which would be pertinent is surprise that it should be deemed necessary to ask the Court to tell the jury what the issue was. The only answer to the instruction asked for justifies the request, and is as follows:

"If the conduct of the defendant has been such as to lead to the belief that the parties were living as husband and wife live, then the defendant is guilty."

Seventh Request. "The defendant was not required to give any notice, public or otherwise, of his manner of life or purposes, or whether he was or was not abstaining from cohabiting with more than one woman, and it is a sufficient defence if you find from the evidence that it is not shown beyond a reasonable doubt that he in fact did live or cohabit with more than one."

Eighth Request. "It is immaterial whether or not there was any change of conduct toward, or of relations

with, his wives at the time of the passage of the Edmunds law, if at and prior to that time he was not violating the provisions of the act relating to cohabiting with more than one woman, and if in 1885 he has not so cohabited, he is innocent of the present charge, whether such innocence is the result of a change of relations with his wives or the result of a maintenance of former relations."

These requests were material in view of the evidence comparing the defendant's manner of living in 1885 with his manner of living during ten or more years, and the instruction permitting the jury to consider such evidence, and the declaration to the jury of what the Edmunds law says. The judge, who delivered the opinion of the Supreme Court of Utah, inadvertently stated that the trial judge's charge was oral. It does not so appear in the record, and in fact, it was written and taken by the jury to their room.

V.

For these errors the court below should have granted a new trial.

VI.

In each case judgment on the record is entered in three cases. We do not understand this practice, and it grossly injures the defendant. Each commitment requires his imprisonment eighteen months, and a satisfaction of one would not on its face be a satisfaction of the others.

Cases No. 1279 and No. 1277.

The alleged errors in these cases are the same as in case No. 1278, and these additional assignments of error, to-wit:

That the court erred in sustaining a demurrer to the plea of a former conviction in one, and a plea of two former convictions in the other, case.

Also, that the court erred in holding that the offence of unlawful cohabition with more than one woman was committed by cohabiting with one woman not a lawful wife, and at the same time having a lawful wife living.

I.

The plea in bar in case No. 1279 set out, and the demurrer admitted, that at the same term of the court and on the same day the grand jury filed three indictments covering a continuous period of time from and including January 1, 1883, to and including the first day of December, 1885. The indictments were set out in full, and show that they are for cohabitation with the same women at the same place, one covering 1883, one 1884, and the last, eleven months of 1885. There is a slight misprint or omission in the body of the plea in the record, but it alleges in substance that all said indictments were found on one charge, one examination of and one oath to the witnesses, and upon an examination of the witnesses covering the whole period of the three indictments. The conviction on one indictment was set forth, with the allegation that it was the same offence.

The plea in case No. 1277 only differed in setting out two convictions.

The statute only prescribes one penalty for unlawful cohabitation, and as the offence in its nature is continuous, it is necessarily the same until the continuity is broken by a prosecution, or by some marked act or cessation, and where the continuous act covers every day, as shown by these in-

dictments, it is claimed that the offence is one and indivisible.

Sturgis *v.* Spofford, 45 N. Y., 446, 453.
Fisher *v.* N. Y. & H. R. R'y, 46 N. Y., 644, 656, 659.
Four like cases—49 N. Y., 654.
State *v.* Egglesht, 41 Iowa, 574, 578.
Mayor, &c., *v.* Ordrenan, 12 Johns, 122, 124.
State *v.* Nutt, 28 Vt., 598, 603.
State *v.* Commissioners, 2d Murphy, 371.

The rule is otherwise where a statute provides a penalty for "every neglect" or "each offence," and implies that one or more acts complete the offence, though there may be a continuation of like acts.

People *v.* Central R.R. Co., 13 N. Y., 78, 80.
Suydam *v.* Smith, 52 N. Y., 382, 388.

The term "cohabit" necessarily implies a continuing act or series of acts, all amounting to the one thing termed cohabitation. A man lives or resides in the same house though he may be absent from it for days. It is true a cohabitation with a woman may cease and then commence again, but on the facts here no such cessation can be assumed on this record or deduced from it. The indictment for 1883 covers the 31st day of December of that year. That for 1884 commences on the 1st day of January, and the same is true for the years 1884 and 1885; and there is not only no cessation in point of time, but no act is shown or appears making any division in this continuity. It is merely arbitrary to divide such a continuous act by years, and such arbitrary division shows that there is no division in fact or in law, and that it can have no principle to support it.

To give the law the construction contended for by the

prosecution would not only be in conflict with the great weight of authority upon the subject but would be contrary to every principle of reason and humanity. It would enable the prosecution to sit supinely by for a period of three years, without any effort to enforce the law, and then, with one fell swoop, come down upon an individual with prosecutions enough, for offences already committed, to render him liable to imprisonment for the remainder of his life, and to absorb in fines an immense fortune. Because, if a man can be indicted for each year, he may be prosecuted for each month, or each week, or even for each day in the three years of limitation. If indicted for each month, the imprisonment would aggregate 18 years, and the fines would amount to $10,800.00; while an indictment for each week would entail an imprisonment of 78 years, and fines amounting to $46,800.00. When the calculation is extended into days the result is simply appalling, showing an imprisonment of 547 years and fines amounting to $328,500.00. It is preposterous and impossible to believe that Congress ever intended to authorize or permit the perpetration of such an inhuman outrage in the name of law.

The case of Commonwealth *v.* Connens, (116 Mass., 35,) cited on this point and relied upon by the Supreme Court of Utah, differs in one or more respects. One sale of liquor in the house would make a complete offence, while one illicit act would not be a cohabitation. The offence in that case was treated as a nuisance, and each continuation of a nuisance is a new offence. There are cases which hold that cumulative prosecutions for several sales of liquor may be maintained, but such cases are distinguishable for the reason that it does not require a continuity of acts to make the offence, but a single sale contrary to law is sufficient.

In 126 Mass., 264, the last case is explained, and it

seems to be thought that the grand jury had some discretion to say what is one or more offences. This is opposed to the case in 41 Iowa, 574, which treats it solely as a question of law, and the latter view must be correct on principle. The grand jury has no authority to treat several offences as one, or *vice versa*, and the law must either declare the whole time prior to presentment one offence, or if it may be segregated into many offences it must define the separating point of each.

To permit the grand jury to exercise such a discretion is to accord to it the province of determining the punishment to be inflicted upon each individual indicted, whereas the law itself fixes the punishment.

II.

The judge, in cases No. 1279 and No. 1277, charged the jury as follows :

" If you find beyond a reasonable doubt that the defendant had, during the year 1884, (in one case 1883,) a legal wife living in Brigham City, Box Elder county, Utah Territory, from whom he was undivorced, that he recognized her as his wife, held her out as such and contributed to her support as such wife, and that during the same year he lived in the same house with the woman Minnie, recognizing her as his wife, associated with her as such, and supported and held her out as a wife, then the offence of unlawful cohabitation is complete, and you will find the defendant guilty. The legal wife in this case is the woman whom the defendant first married."

In case No. 1278, first tried, it appeared in evidence (Transcript, p. 8) that Adeline and Charlotte (who is now dead) were married to the defendant at the same time and that they were his first wives, and that Sarah was next

married to him. Upon this state of facts the Supreme Court of Utah, in its opinion delivered by Chief-Justice Zane, declared that Sarah was the lawful wife.

In the two last cases it only appeared that Adeline was the first one married, (Transcript, p. 12,) and she was treated as the lawful wife in these cases, and so referred to in the foregoing instruction. It was undisputed that the defendant lived with Minnie, the last one married. There was no evidence that the defendant had even seen Adeline in 1883 or in 1884, and no proof was offered of visits or any kind of association between them, and the instruction requires nothing of the kind.

In defining cohabitation, this Court has adopted the second definition of Worcester which is, in substance, *the living together of a man and woman as husband and wife.* The offence manifestly consists of the substantive act of living together, added to a status or relation of the parties, the result of a former act, which in the case of Adeline occurred over forty years ago. In respect to this status no new act is required. It may be maintained passively by merely not denying the marriage, or at most by an admission that it continues. Without the act of living together there is nothing to meet the substantial part of the defined offence. The Court, in this case, defined the offence to be living with one woman as a wife and having a legal wife living who was admitted to be a wife. The words of the law "*cohabits with more than one woman*" are wholly ignored. The status of one and living with the other, is substituted for a living with both.

The act of Congress provides for three classes of cases. It prescribes punishment for contracting the polygamous relation; it punishes a maintenance of polygamous cohabitation where the relation has previously been contracted; and section 8 imposes disabilities for the main-

tenance of the relation or status. These three things are distinct. The instruction unites sections 3 and 8 to make an offence under section 3. It does not cover cohabitation with more than one woman, but cohabitation with one, and the existence of the status defined in section 8 with another, while section 3 requires not only the status, but the substantive act of cohabitation in that relation, "*with more than one woman.*" The charge of the judge defines adultery or a living in adultery, while this Court has said that illicit sexual relations are not what is punishable under section 3, but that this section punishes the maintenance of two households or homes, and implies such an association as will constitute cohabitation. The words "as wives," or "under claim of a marriage relation," are held to be implied in section 3 in furtherance of the general purposes of the whole act. The instruction makes these implied words the substantive definition of the offence, and omits the word "cohabit" as part of the definition. The living with one, and being in a status defined by section 8 with the other, is thus by the charge made criminal under section 3.

This changes entirely the scope and effect of the law and makes it operate as if it read: "Any male person who cohabits with any other woman than his legal wife," whereas the statute now reads: "Any male person * * who cohabits with more than one woman."

Under the plain letter of the law, no unlawful cohabitation can exist with one woman only. *There must be an actual cohabitation "with more than one woman,"* to constitute the offence.

There is a further objection to the instruction. It makes the presumption of cohabitation with the lawful wife indisputable as a matter of law, and does not permit the jury to determine the fact, or permit the presumption to be rebutted

by evidence. In case No. 1279 the whole evidence shows that the defendant had lived exclusively with Minnie, and the repute shown was to the same effect. Under this statute it is incumbent on the prosecutor to show a cohabitation with more than one woman, as a matter of fact, and the presumption of innocence is one directly in the issue, and must prevail over other and more remote presumptions. In a certain class of cases there may be a presumption of cohabitation with the lawful wife, as, for example, where the paternity of a child is in question and the circumstances are such as to admit of the husband having had sexual intercourse with the wife, but even in those cases the presumption may be rebutted by showing that the husband did not have access to the wife. But in a criminal case this presumption is met and rebutted, in the absence of proof, by the presumption of innocence in the issue on the particular charge, and this presumption of law is stronger than more remote presumptions of fact.

Lawson's Presumptive Evidence, p. 433, *et seq.*

Even if there were counter presumptions, they were presumptions of fact, the weight of which were for the jury, and the jury should not have been told to convict as a matter of law, but instructed that they might draw the conclusion of fact if there was any evidence tending to show it.

Stone *v.* Geyser, Q. M. Co., 52 Cal., 315, 318.

People *v.* Walden, 51 Cal., 588, 590.

In case No. 1277, it was further agreed that Adeline, the lawful wife, (who was not present,) would testify that she had not in any way lived with the defendant in 1883, and that the jury might consider the case as if she had so testified. (Transcript, p. 12.)

The remainder of this Brief, applicable to all three of the cases, is designed to cover the argument made by Mr. Curtis.

I.

THE CONSTRUCTION GIVEN BY THE COURT BELOW TO THE 3D SECTION OF THE ACT OF MARCH 22, 1882, AND ON WHICH THE PLAINTIFF IN ERROR WAS CONVICTED, MAKES IT VIOLATE THE FIRST AMENDMENT OF THE CONSTITUTION, BECAUSE IT MAKES THE STATUTE PUNISH THE PROFESSION OF A RELIGIOUS BELIEF, WHEN, UNDER THAT CONSTRUCTION, IT IS APPLIED TO THE EVIDENCE IN THE THREE CASES NOW BEFORE THE COURT.

1. The distinction between the case of Cannon *v.* The United States (116 U. S., 55) and the three cases of Snow *v.* The United States is broad and clear.

Treating the three present cases as one, for the purposes of the argument, because, with reference to the constitutional question, all the evidence that needs to be considered was the same in all of them, we shall contend that the evidence on which Snow was convicted under an erroneous construction of the statute makes the conviction and sentence violate the free exercise of religion guaranteed by the 1st amendment of the Constitution.

In Cannon's case unlawful cohabitation was held to consist in a man's living in the same house with two women, eating at their respective tables one-third of the time or thereabouts, and holding them out to the world, by his language or conduct, or both, as his wives, without occupying the same bed with either of them, or sleeping in the same room, or having sexual intercourse with either of them. No constitutional question arose in that case because there was no language proved to have been used by Cannon, in speaking of either of the two women as

his wife, which required to be put to the jury to find whether he used the term "wife" as indicating a spiritual and religious relation, or used it to signify a claim of right to continue a carnal relation with both of them notwithstanding the prohibition of the statute. But, in Snow's case, the only evidence of his language consisted in proof that he spoke of two women as his "wives," under circumstances which called for a distinct instruction to the jury to find in what sense and with what intent he used that language. If he spoke of the women as his "wives," meaning that by the religious law of his church he was bound to them in a spiritual and religious tie that did not necessarily signify the enjoyment of a carnal relation, but was a mere expression of his religious belief, he could not be convicted of unlawful cohabitation by his *language*, or by the use of his language as part of the evidence of guilt, without violating his rights of conscience. On the other hand, if he spoke of the women as his "wives," in a sense of a claim of right to maintain a carnal relation with them, or to dwell with both of them, notwithstanding the prohibition of the statute, the evidence of his language might go to the jury, along with the other facts proved, without violating his religious freedom; and if the whole evidence, taken together, had a reasonable tendency to show unlawful cohabitation, under a proper definition of that offence, he could have been convicted without a violation of his religious freedom. The imperative necessity, therefore, for a careful instruction to the jury to find in what sense and with what intent he used the word "wife," or "wives," which instruction was not given, and was refused, is perfectly apparent.

2d. The sole proof of Mr. Snow's language consists in the fact that when under arrest, and in the marshal's office, he introduced *Harriet* and *Sarah* as his "wives" to Mr.

Peery, an acquaintance of his and a brother Mormon, just previous to the examination before the U. S. commissioner. His words were: "Mr. Peery, or Brother Peery, this is my wife Harriet; Mr. Peery, or Brother Peery, this is my wife Sarah." (Testimony of Franklin N. Snow, record in case No. 1278, p. 16.)

3d. The extreme importance of having it ascertained by the jury in what sense, and with what intent, he spoke of these two women as his "wives" is apparent from the testimony of the women who were made compulsory witnesses for the prosecution.

Thus, Mary Snow, speaking of Mr. Snow's occasional visits to her, said, in answer to a question put by the prosecution: "In these visits, and in all our intercourse, we recognized each other as husband and wife just as much to-day as ever." What did *she* mean? She was married in 1857. In a previous part of her evidence she testified that "there is a great deal of difference between our relations the past year and eleven years ago." Yet she considers herself as his wife to-day just as much as ever, although she lives entirely by herself, in her own house, and he has merely called on her as a friend. She *could* have meant only that spiritual and religious tie which, according to her and his belief, is created by one of their marriages according to the law of their church, and may be wholly distinct from any carnal relation or any cohabitation, although they hold that it sanctifies the carnal relation.

Eleanor Snow. Married 35 years ago in Nauvoo; resides in her own house; lived in company with Harriet and Sarah. Mr. Snow lives across the block, and has lived there about four years; in 1885 Mr. Snow called on her for a few minutes two or three times; she says "I guess I recognized him as my husband and he me as a wife

during 1885." She could not have meant a recognition of any other than the spiritual and religious tie.

Sarah Snow. Married nearly forty years; has lived for nearly thirty years at the old homestead on Main street; from the time she was married until about ten years ago she lived with him, but has since had a place by herself; "he has not introduced me as his wife for the last ten years, as I can remember, but there has been no less the relation of husband and wife;" she must have meant the spiritual and religious relation.

Minnie Snow. She is the wife with whom he has lived exclusively for four years in the full sense of cohabitation. She says: "I know all the other ladies who have testified, they are his wives;" she, too, could only have meant "wives" according to their religious belief; she testifies, again, "he has not, to my knowledge, publicly claimed these other women as his wives; he has never spoken to me of them as his wives, to my knowledge; certainly they *are* his wives, and it was so understood in the family during the past year."

(This testimony is in the record of case 1278. In the case No. 1279, the following is found on page 14:)

Eleanor Snow. "*According to my religion* I was a married woman in 1884, and my husband was Lorenzo Snow, and I never was divorced from him. * * * *According to my religion* I recognized Mr. Snow as my husband in 1884." By no possibility could she have meant anything but the relation of husband and wife according to their religion. (See also the question put to her by the court and her answer, page 15:)

Mary Snow. "*According to my religious belief* I am married, and was married to defendant in 1857, and have had no divorce," *i. e.*, no divorce according to the law and custom of their church.

4. It is of the utmost importance, therefore, for this Court to know what the religious belief of these people is, and what authorizes the Court to use the ordinary means of judicial knowledge.

The 7th section of the act of May 22, 1882, speaks of bigamous or polygamous marriages known as Mormon marriages, in cases in which such marriages have been solemnized according to the ceremonies of the Mormon sect.

This opens all the ordinary sources of judicial knowledge respecting the marriages of the sect referred to, and authorizes me to read from the book that is accepted by them as the authorized statement of the law of their church.

Moreover, there is testimony in one of these records which distinctly explains what a Mormon marriage is. It is the testimony of Harriet Snow, who was married to the defendant forty years ago.

(See the Record in case No. 1279, pp. 12, 13, testimony of Harriet Snow.)

The Mormon faith on the subject of plural marriage is to be found in the Book of Doctrine and Covenants, section 132, clauses 1 to 7, 48, 61 to 63.

Read title page and explain religious system.

Founded on the assertion of a revelation subsequent and supplemental to the revelation that came through Christ.

1. Hierarchy.

2. Plural marriage.

5. The whole evidence, taken together, consisted of the word "wives," as used by Mr. Snow, and the proof of his visits to the houses inhabited by some of them, besides Minnie, with whom he dwelt exclusively in a house which she and her children alone inhabited.

In the case first tried, (Record 1278,) the conviction

rested on this evidence, as applied to the case of *Sarah*, who was held by the appellate court to be the *lawful* wife. Cohabitation with *her* was held by the chief-justice, in his opinion, to be established by a presumption of *matrimonial* cohabitation, and by *inferences* from the facts. Read from his opinion, page 28, (Record 1278.) As cohabitation in every sense with *Minnie* was admitted by the defendant, the general verdict of " guilty as charged in the indictment " fixes the unlawful cohabitation in this case as cohabitation with *Sarah* and *Minnie*. In this all the judges concurred.

This covered the period from January 5, 1885, to December 1, 1885, eleven months. There was evidence in this very case which should have admonished the trial judge of the nature of the relation of husband and wife claimed by these persons. Thus :

Harriet, (Record 1278, p. 8.)
Mary, (pp. 10–11.)
Eleanor, (pp. 11–12.)
Sarah, (p. 12.)

All this evidence gave to the trial judge the most pointed notice that here he was dealing with the term " wife " or " wives," in a sense that might, when spoken by Mr. Snow, comprehend nothing but a religious doctrine and a religious belief.

It was his plain duty, *sua sponte*, to put it to the jury to find *in what sense* Mr. Snow introduced Mr. Peery to Harriet and Sarah as his " wives."

He was asked to charge so that the jury would not be mislead.

5th prayer, p. 22, (refused.)

Instead of giving this instruction, he throws into the

Phœbe and *Adeline* lived a couple of blocks down the street in what is known as the Cotton Thomas House." (Record, 1279, p. 13.) There is no evidence that Mr. Snow was ever seen in the Cotton Thomas House.

LASTLY. IN THE 2D CASE TRIED, JUDGE POWERS, IN HIS CHARGE TO THE JURY, GARBLED A SENTENCE FROM THE OPINION OF THIS COURT IN CANNON'S CASE, AND DID NOT POINT OUT TO THE JURY THE DISTINCTION BETWEEN THE FACTS OF THAT CASE AND THE FACTS OF THE ONE THAT HE WAS TRYING. HE DID THE SAME THING IN THE THIRD CASE TRIED. *The jury must have been misled.*

The language of this Court in Cannon's case, in reference to the statute, was this:

"It seeks not only to punish bigamy and polygamy when direct proof of the existence of those relations can be made, but to prevent a man from flaunting in the face of the world the ostentation and opportunities of a bigamous household, with all the outward appearances of the same relations which existed before the act was passed, and without reference to what may occur in the privacy of those relations." (116 U. S., p. 72.)

The opinion of this Court was delivered December 14, 1885. It did not reach Utah until just before the 2d of these cases was tried. On the trial of the 1st case, Judge Powers was guided by his own unassisted wisdom and his zeal to procure a conviction. On the trial of the 2d and the 3d cases he had the opinion of this Court in Cannon's case before him in its full text.

It must have been manifest to him that the sentence which he quoted was an illustration only of the facts of the case that were covered by the opinion; that it could have no application to a case which this Court could not have foreseen.

If we analyze the language of this Court, we find that it speaks of—

1. A bigamous household.

2. The ostentation and opportunities of a bigamous household.

3. The flaunting in the face of the world that ostentation and those opportunities.

4. A continuance of *the same relations* which existed before the act was passed.

5. The non-inquiry into the privacy of those relations.

Taking all these ideas together, just as they were expressed, it was apparent that they applied only to the case of a man who dwelt under the same roof with two women, ate habitually at the separate table of each about one-third of the time, and had no other home or dwelling-place. This state of things constituted the ostentation and opportunities of a bigamous household, and the flaunting of them in the face of the world. These were *the relations* which were continued after the passage of the act, as they existed before its passage.

Moreover, in Cannon's case, there was no *language* that had been used by him in reference to the two women as his "wives;" nothing but his *conduct* was in evidence; and it was that conduct alone by which he held them out to the world as his "wives." No element, therefore, of the *religious sense* in which these people regard each other as husband and wife or wives, and are accustomed so to speak of each other, appeared of record in Cannon's case. This Judge Powers must have known if he read the opinion of this Court.

He read to the jury the sentence above quoted; made them believe that it applied to Mr. Snow's case; never told them to inquire in what sense he spoke of *Harriet* and *Sarah* as his wives; left them to apply the language of

this court to his relations with *Adeline*, and admonishing them sharply of the obligations of their oath as jurors to take the law from the court, he procured a conviction.

(See that portion of his charge which is on the top of page 22 of Record, No. 1279.)

This person is no longer a judge; he was commissioned as a judge of the Supreme Court of Utah Territory April 20, 1885, the commission to expire at the end of the next session of the Senate. On or about the 13th of April, 1886, his nomination was withdrawn by the President from the Senate. (See Congressional Record of April 13th, 1886, page 3469.)

It only remains for me, in this branch of the case, to set down the references which show historically the intent and meaning of the first amendment of the Constitution which forbids Congress from making any law "prohibiting the free exercise of religion."

When the Constitution was before the States for adoption, while none of them made its amendment a condition precedent to their ratification of the instrument, six of them positively insisted on having various amendments made in the mode provided for, and three of them gave great emphasis to their demand for an amendment on the subject of religion. These were New Hampshire, Virginia, and North Carolina.

New Hampshire couched her demand in these words:

"The Congress shall make no laws touching religion, or to infringe the rights of conscience."

Virginia and North Carolina used a greater amplitude of expression. Both of them said:

"That religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conscience, not by force and violence; and therefore all men have an equal, natural, and inalienable right to the free exercise of religion according to the dictates of conscience, and that no particular religious sect or society ought to be favored or established in preference to others." (Journals of the old Congress, vol. iv; Appendix, pages 52, 58–59.)

In this comprehensive summary of the whole doctrine, philosophy, and right of religious liberty we may trace unmistakably the hand of Jefferson, seconded by the hand of Madison. We know what Jefferson did for the establishment of religious liberty in Virginia by the bill which he drew and promoted until it became a law. Speaking of this bill in his autobiography he says he "meant to comprehend within the mantle of its protection the Jew and the Gentile, the Christian and the Mohammedan, the Hindoo and Infidel of every description."

Madison, by his course in the Virginia assembly, when they were framing their bill of rights in 1776, left no doubt possible concerning the broad scope of religious freedom. When the subject of amendments of the Constitution of the United States came before the House of Representatives of the First Congress he took the lead in formulating and carrying them through. What occurred on the subject of religion is to be found in the Annals of Congress.

1st Congress, 1789, pages 699, 757–759.

So that there is no difficulty whatever in understanding the constitutional meaning of "the free exercise of religion."

It does not comprehend solely modes of public worship or external acts. It comprehends also the holding of

religious beliefs and their avowal, whatever they may be, and the only possible limitation upon religious belief is that it shall not be pleaded in excuse for conduct which the legislative power sees fit to prohibit because it is injurious to the welfare of society.

If, therefore, the Edmunds act is to be so construed, and so administered and applied as to make it encroach in the smallest degree upon the right to hold and the right to avow a religious belief, it is so far inoperative and void.

We cannot legislate against an idea. We cannot legislate against a thought or an expression of it. We cannot force any belief out of the human soul.

If the expression of a religious belief connects itself with conduct, with external acts, we *must* discriminate between that conduct and those acts which are plainly dictated by the belief, and are not *per se* injurious to the public welfare, and those which are so injurious, or are declared to be so, although dictated by a sincere religious belief.

For example, in the cases now before the Court, it is proved in evidence that there is a certain religious belief on the subject of marriage which makes it to those who hold the belief a religious and spiritual relation for this world and the next. That relation continues to subsist for them, although they never see each other, and although no cohabitation of any kind is possible. We may legislate to break up the carnal relation and to prevent continued cohabitation of a certain kind if it can be judicially defined. But all the while, and when the carnal relation and the cohabitation are broken up, there remains in the soul the religious and spiritual tie which we cannot reach and must not touch in punishing the conduct. Again, if the conduct of the parties towards each other continues to be that and that only which the religious belief dic-

tates as a duty—which the common sentiments of humanity dictate—as visits of sympathy, contributing to support, providing the means of subsistence for women and children, in sickness or in health, in sorrow or in joy, and these acts are not *per se* injurious to the public good, we cannot define them as unlawful cohabitation without violating the rights of conscience. By so doing we punish acts dictated by a religious belief in a religious and moral duty, the discharge of which is in itself perfectly innocent and harms no one. On the other hand, if the conduct is such that when put to a jury under proper instructions, it warrants the conclusion that the parties were living in defiance of the law under a pretext of religious and moral duty, and that is of itself the kind of conduct which the law, rationally interpreted, meant to denounce, it may be punished.

There can be no pretence that this has been Mr. Snow's conduct in 1883, or in 1884, or in 1855.

II.

THE TERMS "COHABIT WITH MORE THAN ONE WOMAN," IN THE 3D SECTION OF THE ACT, ASIDE FROM ANY CONSTITUTIONAL OR OTHER OBJECTION TO THE EVIDENCE GIVEN BY THE PROSECUTION ON THESE TRIALS, DO NOT APPLY TO THE STATE OF FACTS PROVED IN EITHER OF THEM, THERE BEING NO EVIDENCE OF COHABITATION WITH ANY OF THE WOMEN, EXCEPTING MINNIE, DURING THE PERIODS COVERED BY THE RESPECTIVE INDICTMENTS.

1. Cohabitation of a man with a woman, in a penal statute, I should have said meant dwelling together in a sexual relation. But we have passed beyond that, and it has been held by this Court that it means something else. What it ought to be held to mean, in its application to

these Mormons, depends upon a great deal of antecedent public history. A penal statute, breaking in suddenly upon domestic relations that have existed for a long period of time, cannot be construed without some reference to what has gone before. The elements that have a legitimate bearing upon its construction are these :

First. The time of the passage of the law.

Second. The antecedent public history of the sect called Mormons, of their settlement in Utah, and the organization of the territory.

Third. The public equities growing out of public facts.

Fourth. The numbers and situation of the persons to be affected by the construction given to the law.

Of all these things, excepting perhaps the *fourth*, the Court can judicially take notice; and if I mention a few facts which I cannot prove from public sources I presume the Court will permit me to suggest them :

First. The law was enacted March 22, 1882. Polygamy had then existed in Utah, openly and to a large extent, for 35 years.

Second. The exodus of the Mormons from Nauvoo, in the State of Illinois, occurred in 1846. They arrived in the Mexican Territory, and settled near the Great Salt Lake in midsummer of 1847. The territory was ceded by Mexico to the United States by the treaty of Guadaloupe Hidalgo in 1848. The territorial government was organized in 1850. Brigham Young, a known polygamist and the head of the Mormon Church, was made Governor of the Territory, and so continued until he was suspended in 1857. He died in 1877, leaving 17 wives and 50 or 60 children.

Third. The Government and people of the United States from 1847 to 1862, a period of 15 years, knew that polygamy extensively prevailed in Utah, and public opinion,

in the greater part of that period, treated it as a thing that had better not be interfered with and that would in time die out. But on the first of July, 1862, an act of Congress was passed to prohibit it. This act was universally believed in Utah to be unconstitutional. No prosecutions were instituted under it for a long time. But at length a test case was made. The Mormons contended, that as polygamy was sanctioned by their religion Congress could not interfere with it. The test case was decided against this claim, in this Court, in 1879. (Reynolds *v.* The United States, 98 U. S., 145.) There the matter rested until the passage of the act of March 22, 1882; that act being passed because the former was deemed to be inefficient. So that from 1847 to 1882 there was a period of 35 years, during 15 of which there was nothing done but to pass the law of 1862 at the end of that 15 years, and during the remaining period of 20 years nothing was done until the act of 1882 amended the act of 1862, excepting to procure a decision of this Court in 1879 that the act of 1862 was a valid law. In this whole period of 35 years, down to the passage of the act of 1882, there had come to be, including many of the original Mormon settlers who entered the Territory with plural wives in 1847, about 2,000 heads of families having more than one wife, 6,000 women united in wedlock with men who had more than one wife, and an unknown but very great number of children born of such marriages. These estimates are the nearest that can be made from reliable data. When the act of 1882 went into operation, the whole population of Utah was 150,000; a calculation easily made from the census of 1880.* Of these it is estimated that 120,000 are Mormons in religious faith; 30,000 are what are called "Gentiles." The number of

* The Mormons who settled in Utah in 1847 numbered 20,000.

Mormon men holding fully the doctrine of their church in regard to the innocence of plural marriage, but having only one wife, is now about 20,000.

These are, for the most part, persons born in the Territory and descended from parents who lived in plural marriage before 1882, or before 1862. Most of these descendants formed their monogamous unions before the passage of the act of 1882. Some of the persons now situated in the same way in monogamous unions were not born in the Territory, but have come into it from other States or from foreign countries. The latter class of men have either not brought with them any wife or brought only one.

Third. The public equities growing directly out of public facts spring from the long toleration of polygamy in Utah, with full knowledge of its extensive prevalence, from 1847 to 1862, and from the further non-action of the Government and people of the United States during 20 years more, excepting such as was taken in 1862. While it may be said that in 1862 the Mormons of Utah had notice that the institution would not be tolerated longer, it may with very great force be replied that it was not until 1882, a period of 20 years, that anything more efficient, or evincing a more serious purpose, was put on the statute book. These public equities cannot be ignored. While they are no positive bar to legislation, yet the legislator is bound to consider them, and in a court they must be considered in the interpretation and application of the legislation to such a great number of persons, many of whom formed their polygamous unions before 1862, while others formed them in a period after 1862, when Congress evinced no purpose to do anything more than it had done in the act of 1862, for a period of 20 years.

For example:

Sarah Snow was married to defendant in 1846.

Harriet Snow was married to defendant in 1846.

Mary Snow was married to defendant in 1857.

Eleanor Snow was married to defendant about 35 years ago.

Minnie Snow was married to defendant in 1871.

Adeline Snow, who was held in the 2d and 3d cases to have been the legal wife, was married before any of the others named in the indictment.

The date of Phœbe's marriage is not given, but in fact she was married about the same time as Mary. So that of the whole seven, six, Adeline, Sarah, Harriett, Eleanor, Mary and Phœbe, were married, respectively, long before the act of 1862, and one, Minnie, was married eleven years before the act of 1882.

It cannot with any justice be held that a law, which comes in to punish "cohabitation" with women married before there was any legislation on the subject, is not to have its meaning interpreted by any reference to this state of facts. Mr. Snow is convicted of having cohabitated with Sarah in one case as his lawful wife, and with Minnie as his unlawful wife, and in two other cases he is convicted of having cohabitated with Adeline as his lawful wife and with Minnie as his unlawful wife; he married both Sarah and Adeline long before the act of 1862, and the sole evidence of his cohabiting with either of them makes the cohabitation nothing but a constructive dwelling together, spun with the utmost stretch of ingenuity and legal chicanery out of acts perfectly innocent and meritorious.

Respectfully submitted by

GEORGE TICKNOR CURTIS,
FRANKLIN S. RICHARDS,
Counsel for the Plaintiff in Error.

118-346

Supreme Court of the United States.

OCTOBER TERM, 1885.

LORENZO SNOW, PLAINTIFF IN ERROR,
v.
THE UNITED STATES, DEFENDANT IN ERROR.
No. 1,278.

LORENZO SNOW, PLAINTIFF IN ERROR,
v.
THE UNITED STATES, DEFENDANT IN ERROR.
No. 1,279.

LORENZO SNOW, PLAINTIFF IN ERROR,
v.
THE UNITED STATES, DEFENDANT IN ERROR.
No. 1,277.

Brief on Question of Jurisdiction.

GEORGE TICKNOR CURTIS,
FRANKLIN S. RICHARDS,
For Plaintiff in Error.

WASHINGTON:
GIBSON BROS., PRINTERS AND BOOKBINDERS.
1886.

Supreme Court of the United States.

OCTOBER TERM, 1885.

LORENZO SNOW, PLAINTIFF IN ERROR, *v.* THE UNITED STATES, DEFENDANT IN ERROR.	*No.* 1278.
SAME *v.* SAME.	*No.* 1279.
SAME *v.* SAME.	*No.* 1277.

BRIEF ON QUESTION OF JURISDICTION.

First. By section 702 of the Revised Statutes, it is provided that final judgments and decrees of the supreme court of any Territory, except the Territory of Washing-

ton, in cases where the value of the matter in dispute exceeds one thousand dollars, may be reviewed and reversed or affirmed in the Supreme Court upon writ of error or appeal, in the same manner and under the same regulations as the final judgments or decrees of a circuit court. In the Territory of Washington the value of the matter in dispute must exceed two thousand dollars; and it is then provided that "any final judgment or decree of the Supreme Court of said Territory *in any cause when the Constitution or a statute or treaty of the United States is brought in question may be reviewed in like manner.*"

By act of Congress approved June 23, 1874, entitled "An act in relation to courts and judicial officers in the Territory of Utah," a writ of error is allowed to the Supreme Court of Utah from this Court, in criminal cases, where the accused has been sentenced to capital punishment, or convicted of bigamy or polygamy.

By the 25th section of the judiciary act of 1789, (amended in section 709 of the Revised Statutes,) a writ of error can issue to the highest court of a State, in which a decision in a suit could be had, when is drawn in question the validity of a treaty or statute of, *or an authority exercised under, the United States*, and the decision is against their validity.

In 1885, Congress passed the following act, which was approved by the President March 3d of that year:

"An act regulating appeals from the Supreme Court of the District of Columbia, and the supreme courts of the several territories.

"Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled—

"That no appeal or writ of error shall hereafter be allowed from any judgment or decree in any suit at law or in equity

in the Supreme Court of the District of Columbia, or in the supreme court of any of the territories of the United States, unless the matter in dispute, exclusive of costs, shall exceed the sum of five thousand dollars.

"Section 2. That the preceding section shall not apply to any case wherein is involved the validity of any patent or copyright, or in which is drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States; but in all such cases an appeal or writ of error may be brought without regard to the sum or value in dispute."

The obvious intent of the first section of this law is to limit the appellate jurisdiction of this Court in all civil cases from the supreme courts of the Territories, to those where the amount in dispute exceeds five thousand dollars, exclusive of costs.

The second section provides that an appeal or writ of error to this Court shall be allowed *in any case, either civil or criminal*, where is drawn in question "*the validity of a treaty or statute of, or an authority exercised under the United States*," without regard to the sum or value in dispute.

It seems clear that Congress meant to extend the same provision to the supreme courts of the Territories that had been enacted by the 25th section of the judiciary act of 1789, and by section 709 of the Revised Statutes, with regard to the highest courts of a State, namely: That when the validity of a treaty or statute of, or an authority exercised under, the United States, is involved, a writ of error will be granted in any case, civil or criminal. No language can be broader or clearer than is used in this second section: "In all such cases," that is, when "the validity of a treaty or statute of, or an authority exercised under, the United States," is drawn in question, an appeal or writ of error may be allowed.

By repeated adjudication, this Court has held that the 25th section of the judiciary act, (709 of the Revised Statutes,) which we have quoted, extends to criminal cases, and the language of the two acts is identical as to the provisions under discussion.

Twitchell *v.* Commonwealth, 7 Wall., 324.

Tennessee *v.* Davis, 10 Otto, 284–288.

Section 702 of the Revised Statutes, which we have quoted, provides for a writ of error to the Supreme Court of Washington Territory "in any cause when the Constitution or a statute or treaty of the United States is brought in question," and Congress intended by the second section of the act of March 3d, 1885, to extend the same right to all the Territories.

The object is to secure a uniform and authoritative exposition of the Constitution, laws, and treaties of the United States which extend over the Territories and States alike.

If it be contended that the words at the end of the second section, "without regard to the sum or value in dispute," show that the act applies only to civil cases, then we reply that these words were used to exclude the construction that the jurisdictional limit of one thousand dollars, fixed by section 702 of the Revised Statutes, applied to cases under the second section. The first clause of the second section declares that the first section of the act shall not apply to cases in which is drawn in question the "validity of a treaty or statute of, or an authority exercised under, the United States," and the last clause of the second section affirmatively grants a writ of error "in all such cases;" and then by the words, "without regard to the sum or value in dispute," also removes the limit of one thousand dollars from all civil cases to which the section applies. That is to say, an appeal or writ of error shall be allowed

from the supreme court of the Territory *in all criminal cases where is drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States;* and an appeal or writ of error shall also be allowed in all civil cases from the same tribunal, when like questions are involved, without regard to the amount in dispute.

This is the only construction which gives effect to the entire section, and makes this enactment harmonize with the other acts of Congress establishing the appellate jurisdiction of this Court.

Second. It seems beyond question that this case comes within the class named in the second section of the act of Congress approved March 3, 1885, and quoted above. The construction of the "Edmunds law" was directly drawn in question, and also the authority exercised under the United States by which the defendant was tried and convicted.

It will not do to say that the only question under the second section is as to the validity of the act, that is, whether it was regularly passed by Congress, approved by the President, and is constitutional.

The authority of the United States is invoked to deprive the citizen of his liberty, in a court established by Congress, and acting solely by Federal power; and the vital question in the case is, whether the authority exercised under the "Edmunds law" is a valid authority, and within the scope of the act. When upon the record the question is raised that the territorial court has misconstrued the law, and acted beyond the authority it confers, then this Court has jurisdiction under the provisions of the second section.

In these cases the plaintiff in error directly questions the

authority under which he was convicted, and says that no such authority was conferred on the territorial court by the United States. This constitutes the exact case described in the second section of the act of March 3d, 1885.

In Tennessee *v.* Davis, (10 Otto, 284,) Mr. Justice Clifford says: "The writ of error to the State court will not lie at all, unless *the construction* of some clause of the Constitution, or some act of Congress or treaty, is drawn in question, and the decision was adverse to the party setting up such right or title. If those conditions concur, the writ will lie, irrespective of the amount in dispute, provided it appears that the right or title set up depends upon *the construction* of the Constitution, an act of Congress, or some constitutional treaty. (Williams *v.* Norris, 12 Wheat., 117.)"

In Dupasseur *v.* Rochereau, (21 Wall., 130,) the State court had not given due effect to a judgment of a court of the United States and it was held to involve *the validity of an authority exercised under the United States.*

In Meguire *v.* Commonwealth, (3 Wall., 382,) the indictment was on a State law, and a license under a Federal law was set up, and it was held to raise a Federal question.

The indictments in these cases are directly on a United States statute—the "Edmunds law."

The National Bank cases are in point. State courts, by misconstruing the United States law, held certain securities and contracts void. No question arose as to the general validity of the act, but its construction and effect with reference to the facts before the court were involved.

National Bank *v.* Matthews, 98 U. S., 621.
National Bank *v.* Whitney, 103 U. S., 99.
Swope *v.* Leffingwell, 105 U. S., 3.

The foregoing seems to us conclusive of the question, but if there ever was a doubt upon the subject, we respectfully

submit that it was solved in favor of the jurisdiction of this Court, by the case of Angus M. Cannon *v.* The United States, (116 U. S.,) which was, in this regard, precisely such a case as the ones now before the Court.

GEORGE TICKNOR CURTIS,
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For Plaintiff in Error.

118-346

FILED
APR 26 1886
JAMES H. McKENNEY
CLERK

Supreme Court of the United States.

OCTOBER TERM, 1885.

LORENZO SNOW, Plaintiff in Error,
vs.
THE UNITED STATES. } No. 1277.

SAME
vs.
SAME. } No. 1278.

SAME
vs.
SAME. } No. 1279.

IN ERROR TO THE SUPREME COURT OF THE TERRITORY OF UTAH.

Brief for the United States.

Supreme Court of the United States.

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LORENZO SNOW, Plaintiff in Error, *vs.* THE UNITED STATES.	No. 1277.
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SAME *vs.* SAME.	No. 1279.

IN ERROR TO THE SUPREME COURT OF THE TERRITORY OF UTAH.

Brief for the United States.

These are prosecutions against the plaintiff in error under the 3d section of the act of Congress of the 22d March, 1882 (22 Stat., 31), for cohabiting with more than one woman.

They raise the question, What sort of *consor tium* is necessary to constitute cohabitation under the law?

On the part of the plaintiff in error it is contended that a man must actually dwell with a plurality of women to make the offense, so that if a man having polygamous relations with a large number of women, living apart from each other, should go from one to another with such frequency as that he could not be said to abide or dwell with any one of them, this, albeit a shocking exhibition of licentiousness, *would be no offense under the law!*

The object of the legislation in question was to eradicate polygamy and to encourage and establish monogamy, and yet, according to the opposite contention, the law may be a *felo de se* where polygamous relations exist of the most abhorrent kind.

Surely this court will hesitate long before holding that the very enormity of the evil against which the law is leveled makes it dispunishable.

Where polygamy prevails men are "all but stomachs" and women "all but food," and, as Desdemona's maid says, referring to the Moor's cruel usage of her mistress—

> They eat us hungerly, and when they are full
> They belch us.

And, strange to say, this pestilent tendency of polygamy to make men to be ever seeking new women to gratify or rekindle passion, is the main ground relied on for defeating these prosecutions set on foot under a law for the suppression of polygamy and polygamous practices and the encouragement of monogamy! For it is in proof here that the plaintiff in error, "Apostle" Snow, God save the mark! after having had eight other wives, six of whom are now living, is now rejoicing in his ninth, who, it goes without saying, is the youngest and most attractive of them all, and by whom this man of three score and ten has several children, the youngest being an infant three months old.

It is not denied that Snow claims to be the husband of all these women, or that the women claim

to be "sealed" to him for time and eternity, as his lawful wives. It is not denied that all these women and their children are supported by Snow, but it is contended that Snow, enjoying all the opportunities and freedom of access of a husband, as he does, is not in cohabitation with any of them except the youngest, Minnie, who will hold him no doubt until some more attractive woman or goodman Death snatch him away from her.

It is not necessary to give the word "cohabit," as used in the third section of the law, a new sense in order to support the judgments. At the same time this court, it is believed, would not hesitate to do so if the intention of Congress could not be effectuated otherwise.

If a man from the nature of his avocations, as if he follow the sea or be a commercial traveller, be rarely at home with his wife, he is, nevertheless, in cohabitation with her. And the same would be the case if no more than a love of adventure took him away from home. In all these instances the man and the woman are living together as man and wife, which is all that cohabitation means.

In the case of a plurality of wives or women, the man may prefer the society of one to that of the others, and, as a consequence, may make infrequent visits to the latter, but can it be said he is not in cohabitation with them? Surely if he had left all of them to follow the sea or the avocation of a commercial traveller, he would nevertheless be in cohabitation with all. Why, then, is he not in cohabitation with all, even though he pass nearly the whole of his time with one, the others being maintained and recognized as wives the while?

If this is not so then there is rarely cohabitation with a plurality of women, since it is a phase of polygamy that the man has his favorite of favorites, and gives her or them the most of his time and attentions. Now, we respectfully maintain that it must be presumed that Congress legislated with a view to these known conditions of polygamy and polygamous practices, and that in using the word cohabit Congress cannot be understood to have employed it in the sense of an actual living and dwelling of the man with each one of a plurality of women, a state of things which

Congress knew not only did not exist, but could hardly exist at all in a case where a man, like the plaintiff in error, had seven wives.

It would be indecorous, in this court, it would seem, to take a view of the law in question which would necessarily involve the imputation to Congress of want of sufficient acquaintance with the subjects of so important legislation as the act of 22d March, 1882.

In determining whether the plaintiff in error had in fact put away all his wives or women, save one, it was the duty of the jury to take into account the character of the testimony upon which the prosecution rested. Of necessity prosecutions of this description must be maintained on the testimony of the very women with whom the accused is charged with holding polygamous relations, and who, to shield themselves, must set up the pretension to be the wives of the accused by religion and by right, and, to shield the accused, must be expected, under the almost irresistible stress of interest and affection, to shape their testimony so as to bear as little against him as possible.

This is natural and to be expected with the most truthful persons, and it is the right of the Government to have due effect given to this moral law in weighing the testimony of women with whom the accused was consorting as a husband before the Edmunds law was passed.

Said that masterly judge of facts as well as law, Sir William Scott, in a matrimonial cause (Chambers *v.* Chambers, 1 Hagg. Con. R., p. 445):

> They [courts of justice] will judge of facts as other men of discernment, exercising a sound and sober judgment, on circumstances that are duly proved before them.

Says another judge:

> We have no test of the truth of human testimony, except its conformity to our knowledge, observation, and experience (Daggers *v.* Van Dyck, 37 N. J. Eq. R. 132).

Speaking of the tendency to represent *in mitiori sensu* whatever makes against us, a well-known judge says:

> Who ever answers yes to the question put to to them, as to their candidature for office, their ap-

proaching nuptials or their participation in a usurious contract? The respondent, seeking a veil to conceal his confusion, falteringly *presumes* the thing is or may be so. Such, we have no doubt, was the meaning of this witness. The note was payable to himself, he had renewed it, and consequently knew positively whether it was or was not usurious.

But unwilling to face the transaction without disguise, and to admit that he had broken the first law made for mankind after the fall, which was, that in the sweat of *their own* face they should eat their bread, *and not in the sweat of other people's;* and still more reluctant, perhaps, to testify to his own undoing, frankly to admit facts which would forfeit *all interest* on the original sum loaned; and yet, resolved not to testify falsely, the witness states that he "presumes the note was renewed at 16 per cent. per annum, but *will not* (he does not say *he cannot*) state positively; and that if renewed at all (he had already sworn that it was), "*it*," that is, the usurious interest, "was added in the note."

Experience, to which alone we can appeal, teaches us that the women examined by the prosecution in these cases had the strongest motive to secure the acquittal of the accused and must be held to have deposed to every fact that made in his favor.

If they had been able to bear such witness, they would have said, that so completely had the accused put them away from him as that *he had become to them as other men*, bound to observe the conventionalities that ordinarily govern the most friendly relations between reputable men and women.

Their failure to give such testimony is *conclusive* that they could not have done so without forswearing themselves. Reticence in this respect on the part of these women is inconsistent with any rational hypothesis of the accused's innocence. It was for the jury to consider as well what was *not* said as what was said, and their conclusion, therefore, is beyond the reviewing power of this court.

The Pleas of Autrefois Convict.

These pleas raise the most important questions that arise upon these writs of error.

Counsel opposite, in their zeal, seem to think that the demurrers to the pleas can only be sustained upon a notion that crimes generally are, like matter, infinitely divisible.

The prosecution supports the demurrers upon no such ground. If the ruling of the court below is not sustainable upon common law principles, it is to be hoped it will not be upheld here. But it is maintainable upon well-settled principles of that system of jurisprudence.

Where an offense at common law consisted of a habit of life or course of conduct, it might always be charged in the way in which the offenses here have been charged. Indeed, it might be charged without the limitation of time which marks each of these indictments.

For instance, indictments for such nuisances as being a common scold or a common barrator are unconfined by time or circumstance, but while this generality of pleading is permitted, the practice is for the court to compel the prosecution, before the trial, to inform the accused in writing, of the particular acts relied on, and to these specifications must the evidence of the prosecution be restricted. (See Wharton's Precedents of Indictments and Pleas, 781, 2d ed. 1857, Philadelphia.) Says Mr. Chitty, "But in the case of an indictment

against a common barrator, though it may be general, the prosecutor must give the defendant notice before the trial of the particular instances that are meant to be proved." (Cr. Law, Vol. 1, p. 231.)

From this practice it is clearly to be deduced that there might be any number of indictments against a party for either of the offenses named, but that no one indictment could be supported by evidence which had been introduced under any of the others.

All that is necessary in charging such an such offense is that the interval of time relied on should be sufficient to admit of proof of a habit of life or a course of conduct.

It was upon this principle of the common law that the supreme court of Massachusetts proceded in the case of the Commonwealth *v.* Connors (116 Mass., 35). The same principle is reaffirmed in Commonwealth *v.* Robinson (126 Mass., 259), and in Commonwealth *v.* Pray (13 Pick., 359; *vide* Deyo *v.* Rood, 3 Hill, 527).

The Defendant's Requests.

Evidence of cohabitation in 1883 and 1884 on the trial for alleged cohabitation in 1885 was admissible upon a well-established principle, as having a manifest tendency to show the character of the relations in 1885. Two cases decided by the supreme court of New Hampshire forcibly illustrate the propriety of the ruling below. (State *v.* Shaw, 58 N. H., 73; State *v.* Gorman, *ibid*, 78.)

As to the refusal to allow evidence that there was no sexual intercourse, this evidence was properly rejected. It had no relevancy to the issue, and its introduction might have led the jury into the erroneous supposition that sexual commerce in some way necessarily entered into the idea of cohabitation, as that term is employed in the statute. Can it be perceived that the evidence had a tendency to make less probable the hypothesis of an illicit *consortium?*

The court must judge of the relevancy of evidence by its experience of the physical or moral worlds, and seeing that polygamous relations, as

this case shows, are kept up confessedly without carnal knowledge, in fact that this is one of the conditions of that state of society, it was difficult to see that the proffered testimony had any tendency to weaken the case of the Government.

The constitutional point that the act of 1882, as construed by the Territorial court is an infraction of the religious privilege, is the outcome of the notion that polygamous cohabitation means the man's actually taking up his abode with all his women—a sense of the word which, as we have said, if judicially countenanced, must necessarily emasculate the law.

It is to be regretted that the unavoidable haste in which this brief has been prepared has made it impossible to notice all the points and arguments advanced by the distinguished counsel opposite.

It is respectfully submitted that the judgments must be affirmed.

WM. A. MAURY,
Assistant Attorney-General.

118-346

Supreme Court of the United States.

OCTOBER TERM, 1886.

LORENZA SNOW, PLAINTIFF IN ERROR,
v.
THE UNITED STATES.
No. 1277.

In Error to the Supreme Court of the Territory of Utah.

Comes now Lorenza Snow, plaintiff in error in the above-entitled cause, and shows to the Court that this is a criminal case; that it involves the construction of a public law of the United States, under which plaintiff in error has been convicted, and is a matter of great personal concern to the plaintiff in error herein, and of general public interest, and arises under the act of March 12, 1882, entitled "An act to amend section 5352, Revised Statutes, in reference to bigamy, and for other purposes," and an early decision of this cause is important to the plaintiff in error and to a large number of other people now under conviction and imprisonment, under and by virtue of what plaintiff in error alleges to be an erroneous interpretation of said law; that plaintiff in error is now confined in the penitentiary by virtue of the conviction aforesaid; that this case, if delayed to a regular hearing upon the docket had in due course of procedure in this Court, will not reach a de-

cision for a long time in the future. The construction of the statute under which plaintiff in error is imprisoned was not unanimously agreed to by the supreme court of Utah, but the chief-justice thereof dissented.

Whereupon plaintiff in error moves the Court that said cause be advanced on the docket in pursuance of paragraph 3 of rule 26, of this Court, and plaintiff in error prays the Court to set this case for hearing as near the middle of April of this year as will best accommodate the convenience of this Court.

JEFFERSON CHANDLER,
Atty. for Pl'ff in Error.

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JEFFERSON CHANDLER,
Atty. for Pl'ff in Error.

118-376

Office Supreme Court U. S.
FILED.
MAR 18 1886
JAMES. H. McKENNEY,
CLERK.

SUPREME COURT

OF THE

UNITED STATES.

LORENZO SNOW,
Plaintiff in Error,
vs.
THE UNITED STATES,
Defendant in Error.
No. 1277.

LORENZO SNOW,
Plaintiff in Error,
vs.
THE UNITED STATES,
Defendant in Error.
No. 1278.

LORENZO SNOW,
Plaintiff in Error,
vs.
THE UNITED STATES,
Defendant in Error.
No 1279

MOTION FOR ADVANCEMENT.

FRANKLIN S. RICHARDS, and
HUNTON & CHANDLER,
Attorneys for Plaintiff in Error.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

LORENZO SNOW,
Plaintiff in Error,
vs.
THE UNITED STATES,
Defendant in Error.
No. 1277.

LORENZO SNOW,
Plaintiff in Error,
vs.
THE UNITED STATES,
Defendant in Error.
No. 1278.

LORENZO SNOW,
Plaintiff in Error,
vs.
THE UNITED STATES,
Defendant in Error.
No. 1279.

MOTION FOR ADVANCEMENT.

Now comes the plaintiff in error in the above entitled causes, and moves the Court to advance the same for hearing at the present term of the court.

The nature of the causes, the matters involved therein, and the reasons for the application, are as follows:

On the fifth day of December, 1885, the Grand Jury for the District Court of the First Judicial District of Utah Territory, at Ogden, in said Territory, presented in said court three indictments against the plaintiff in error, respectively charging

unlawful cohabitation with more than one woman for the year 1883, the year 1884, and the eleven first months of 1885, contrary to the act of Congress.

All of said indictments charge the cohabitation at the same place, with the same women, and all were found at the same time upon one oath to and examination of the same witnesses, and upon an inquiry covering the entire period included in the three indictments.

On the sixteenth day of December, 1885, the plaintiff in error pleaded not guilty to each of said indictments.

The causes were successively tried in the inverse order of the time covered by the indictments and on the 31st day of December, 1885, the plaintiff was convicted under the indictment for 1885.

By leave of Court the plaintiff in error further pleaded this conviction in bar of the indictment for 1884.

A demurrer to said plea was sustained, and the plaintiff in error was convicted on the indictment for 1884, on the fifth day of January, 1886.

By leave of Court the plaintiff in error further pleaded the two convictions in bar of the indictment for 1883.

A demurrer to the plea was sustained, and on the fifth day of January, 1886, the plaintiff in error was convicted on the indictment for 1883.

After motion for a new trial was overruled in each of said cases, judgment of imprisonment in the Utah Penitentiary for the term of six months, and for the payment of a fine of three hundred dollars and costs of prosecution, and imprisonment till the fine and costs are paid, was rendered in each cause.

On appeal to the Supreme Court of Utah, the judgments were affirmed; the judgment on the conviction for 1885 by the concurrence of all the judges; the judgments in the other two cases by the concurrence of two judges, Chief Justice Zane dissenting.

A writ of error was allowed in each case on the petition

of the plaintiff in error, and upon the record and an assignment of errors.

The case on the indictment for 1885, in view of the evidence received and rejected, and the instructions given and refused, involves the construction, authority and validity as applied to the case, of the act of Congress under which the indictment was found. The other two cases involve the same questions on the same instructions given and refused, and two additional questions, more important and far broader in their effect and consequences than any questions which have reached an appellate court under said act of Congress, to-wit:

1st—Can a continuous cohabitation at the same place and with the same women up to the time of the prosecution, be divided into separate and distributive offenses, marked only by an arbitrary division of time?

2d—Is the offense of cohabiting with more than one woman committed by living with only one woman not a lawful wife, and having a lawful wife living, when there is no proof that the person charged even saw the lawful wife during the time charged; and if there is a presumption of cohabitation with the lawful wife, is that presumption absolute and not capable of being disproved as a fact?

On this last question the judges in Utah are divided in opinion, as will appear by the records, and it is directly raised by the following instruction in two cases, to which exception was taken:

"If you find, beyond a reasonable doubt, that the defendant had, during the year 1884 [the year 1883 in one case], a legal wife living in Brigham City, Box Elder County, Utah Territory, from whom he was undivorced, that he recognized her as his wife, held her out as such, and contributed to her support as such wife, and that during the same year he lived in the same house with the woman Minnie, recognizing her as his wife, associated with her as such, and supported and held her out as a wife, then the offense of unlawful cohabitation is complete, and you will find the defendant guilty. The

legal wife in this case is the woman whom the defendant first married."

The statement of these questions show their wide significance in the daily application of the law in Utah.

The questions in these cases, though important, require no lengthy arguments, and the three cases can be argued together within the time given for argument by the court in a single case.

The reasons for asking advancement of the causes are:

The plaintiff in error is imprisoned in execution of the judgments.

The rule of the courts in Utah is not to allowed bail after conviction unless some extraordinary reason, such as new facts or circumstances affecting the merits, has arisen since the trial, and the discretionary power to so interpret the law, was affirmed by this court in *Clawson vs. United States* (113 U. S. 143). The plaintiff in error relies on the errors assigned in the record, and cannot assign any extraordinary reason arising since trial as a ground for bail. He was nearly seventy-two years old when the trial occurred, and the efflux of time since then cannot be called extraordinary. A suspension of the execution of the judgments by a certificate of probable cause would, if attainable, be useless, because in the absence of bail he would be kept in the same prison and subject to the same hardships, as if imprisoned in execution of the judgments, and if said causes are not advanced his term of imprisonment will expire before the causes can be determined in their order, and his writs of error become practically useless as a remedy for the correction of the errors he alleges. The plaintiff in error therefore respectfully prays that his motion be allowed.

LORENZO SNOW.

Dated March 12, 1886.

Espa Hunton
Jeff Chandler for J.T.C.
Atty for Plaintiff
in Error

TERRITORY OF UTAH,
Salt Lake County. } ss.

Lorenzo Snow being duly sworn says: I am the plaintiff in error in the causes entitled in the foregoing motion, and I am actually imprisoned in the Utah Penitentiary in execution of the judgments recited in said motion.

LORENZO SNOW.

Subscribed and sworn to before me the 12th day of March, 1886.

JOSEPH F. SIMMONS,
Notary Public for Salt Lake County, Utah Territory.

Seal

I certify that Lorenzo Snow is imprisoned in the Utah Penitentiary of which I am in charge, on commitment issued on the judgment recited in the foregoing motion.

E. A. IRELAND,
U. S. Marshal and Warden of said prison.

Dated March 12, 1886.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 1280.

YICK WO, PLAINTIFF IN ERROR,

vs.

PETER HOPKINS, SHERIFF OF THE CITY AND COUNTY OF SAN FRANCISCO.

IN ERROR TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

FILED MARCH 5, 1886.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 1280.

YICK WO, PLAINTIFF IN ERROR,

vs.

PETER HOPKINS, SHERIFF OF THE CITY AND COUNTY OF SAN FRANCISCO.

IN ERROR TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

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JUDD & DETWEILER, PRINTERS, WASHINGTON.

1 *Petition for Writ.*

In the Supreme Court of the State of California.

In the Matter of the Application of YICK WO for a Writ of *Habeas Corpus.*

To the honorable the judges of the supreme court of the State of California:

The petition of Yick Wo humbly represents that he is unlawfully restrained of his liberty by Peter Hopkins, sheriff, at the old city hall, in the city and county of San Francisco, in the State of California. To make manifest the illegality of the said restraint, your petitioner respectfully shows:

I.

That he is a native of China, who, with the permission of the State of California and the United States of America, entered
2 the State of California in the year 1861, and from that time up to the filing of this petition has, with like permission, resided within the said State of California, and labored faithfully for an honest livelihood.

II.

That your petitioner is still a subject of the Empire of China, and has never been permitted by the laws of this land to become a citizen thereof. For this reason he is compelled to crave your honors' consideration of the treaty stipulations between the United States and China, in addition to the humane and liberal provisions contained in the organic and statutory laws governing your honors' country.

III.

For more than twenty-two years your petitioner has been engaged in the business of washing clothes at No. 349 Third St., in the city and county of San Francisco, and he numbers among his
3 patrons many of the oldest and most respectable citizens in his neighborhood. Your petitioner's said business, while not lucrative, has been remunerative and highly valuable to him. His business is carried on in a house constructed of wood, like the great majority of buildings in San Francisco, and it has occupied its present site for more than twenty-two years, and has been continuously used as a laundry for more than twenty-two years.

IV.

While carrying on his said business in the said house, your petitioner has scrupulously complied with every revenue, health, fire, and police regulation applicable to the laundry business, in a frame house, notwithstanding the fact that these regulations have been numerous, in many cases onerous, and frequently cumulative, as

will appear from a review of the city's changeful legislation on this subject.

V.

On May 4th, 1866, the board of supervisors of San Fran-
4 cisco adopted an ordinance, numbered 697, whereby the necessary work of cleansing soiled clothing was, for the first time in the history of the city, subjected to special burdens in the form of a license tax upon all "laundries and laundry offices" employing vehicles "drawn by animal power." This ordinance, it would seem, contemplated nothing more than indemnification for the use of the city's highways by horses, for it placed no burdens upon and gave no attention to laundrymen who did not employ "animal power."

On June 23rd, 1873, they adopted an ordinance, numbered 1098, whereby the theory or policy of order 697 was reversed, and laundrymen who did not use vehicles drawn by animal power were charged a license tax of fifteen dollars a quarter, while those who did use vehicles drawn by animal power were charged as follows: Where the establishment employed one vehicle the license tax was only two dollars per quarter; where it employed two vehicles
5 the tax was four dollars per quarter, and where it employed more than two, no matter how great the monopoly, the tax was only fifteen dollars per quarter—the same precisely that was required of the little establishment which could not afford to use animal power. When it [is] remembered that the Chinese who are engaged in the laundry business do not [use] vehicles drawn by animal power, the purpose of the city's authorities to discriminate against them is painfully evident.

On February 24th, 1874, they adopted an ordinance, numbered 1135, whereby they repudiated the discriminating features of order 1098, and, as if ashamed of the same, returned to the terms of order 697, imposing the burdens of taxation upon those laundries only which where able to and did employ vehicles drawn by animal power.

On March 15th, 1876, they adopted an ordinance, numbered 1264, whereby they restored the discriminating features of order 1098, and once more placed the laundries which employed no vehicles
6 drawn by animal power under a heavier burden of taxation than those which employed one or two vehicles, and under the same burden of taxation as those which employed more than two such vehicles. In the race between fair dealing and discrimination, up to this point it is difficult to determine which holds the advantage.

On May 1st, 1878, they adopted an ordinance, numbered 1429, whereby they repudiated the vehicle and horse-power feature of the preceding orders, and introduced the more natural and equitable method of adjusting the burden of taxation by the number of persons employed in the laundry. This system of fixing the license tax was too just to excite criticism.

On December 1st, 1879, they adopted an ordinance, numbered

1547, whereby the righteous system of order 1429 was re-enacted and continued in force.

Up to February 24th, 1880, the manner in which, the place where, or the character of the building in which the laundry busi-
7 ness was carried on had not become the subject of municipal regulation, the legislation up to this time simply placing it in the category of licensable occupations with an ever-shifting standard by which to determine the amount of the license tax.

But on February 27th, 1880, they adopted an ordinance, numbered 1559, whereby they enacted that "all buildings erected and used as laundries within the corporate limits of the city and county of San Francisco, on and after March 1st, 1880, shall be constructed but one story in height, with brick or stone walls not less than twelve inches in thickness, covered with a metal roof, and provided with metal or metal-covered doors and window-shutters."

The penalty for violating this ordinance was fixed at a fine not exceeding one thousand dollars and imprisonment in the county jail not exceeding six months, or either.

At this time, to wit, February 24th, 1880, there were about 320 laundries in the city and county of San Francisco, of which
8 about 240 were owned and conducted by subjects of China, and of the whole number, viz., 320, about 310 were constructed of wood, the same material that constitutes nine-tenths of the houses in the city of San Francisco. The capital thus invested by the subjects of China was not less than two hundred thousand dollars, and they paid annually for rent, license, taxes, gas, and water about one hundred and eighty thousand dollars.

This order 1559 made no provision for the practice of discrimination, so the board adopted, on May 26th, 1880, an ordinance number 1569, wherein they said "it shall be unlawful from and after the passage of this order for any person or persons to establish, maintain, or carry on a laundry within the corporate limits of the city and county of San Francisco without having first obtained the consent of the board of supervisors, except the same be located in a building constructed of either brick or stone."

It will be observed by your honors that this order 1569 in no way informs or pretends to inform the applicant what he must do or what he must be in order to secure the supervis-onal consent;
9 it prescribes no rule of action as to qualifications, etc. If such an order be reasonable and valid then discrimination by indirection may be practiced with- limit and without redress.

On July 28th, 1880, they adopted a comprehensive system of police and sanitary regulations in an ordinance numbered 1587, wherein the following sections occur with reference to laundries, viz:

"Section 67. All buildings erected and used as laundries within the corporate limits of the city and county on and after March 1st, 1880, shall be constructed one story in height, with brick or stone walls, not less than twelve (12) inches in thickness, covered with a metal roof, and provided with metal or metal-covered doors and window-shutters.

"Section 68. It shall be unlawful from and after the passage of

this order for any person or persons to establish, maintain, or
10 carry on a laundry within the corporate limits of the city and county of San Francisco without having first obtained the consent of the board of supervisors, except the same be located in a building constructed either of brick or stone."

The maximum penalty for violating this ordinance is a fine not exceeding one thousand dollars and imprisonment not exceeding six months.

It will be observed that this order, 1587, applied to transactions as far back as March 1st, 1880, though not adopted until July 28th, 1880, nearly five months subsequent to the time when the prohibition is made operative.

On June 10th, 1882, they adopted an ordinance, numbered 1679, whereby an entire change was made as to the limits of the regulated district and the conditions upon which laundries might be maintained. Section 1 of that order made it unlawful to maintain a laundry east of Ninth and Larkin streets without the consent of the board of supervisors, which consent could only be granted upon the recommendation of twelve or more citizens and tax-payers in
11 the block where the laundry was to be established.

On October 21st, 1882, they adopted an ordinace, numbered 1691, in which a new and very elaborate system of regulation was brought into operation.

This ordinance, after reciting the novel discovery that the maintenance of laundries where clothes are cleaned for hire is injurious and dangerous to public health, etc., enacted in substance as follows:

1st. That on and after January 1st, 1883, it shall be unlawful to maintain a laundry within that portion of the city and county which lies between the waters of the bay and a line drawn through Gough, Market, Ninth, and Channel streets "without having first obtained a license or permit therefor, duly granted by resolution of the board of supervisors."

2d. That the license collector shall not issue a license until the applicant therefor produces a certified copy of the aforesaid resolution.

12 3d. That before license or permit is granted by the board the applicant must file with the clerk thereof:

An accurate description of the premises.

A certificate of the health officer that the premises are properly drained and that all arrangements for conducting the business without injury to the sanitary condition of the neighborhood have been complied with;

And a certificate of the board of fire wardens that the stoves, washing and drying apparatus, and the appliances for heating smoothing irons are in good condition, and that their use is not dangerous to the surrounding property, and that all proper precautions have been taken, etc.

13 4th. That the health officer and the board of fire wardens shall, upon the applicant's request, and without charge, make

the inspections necessary to enable them to give the aforesaid certificates.

5th. That laundrying shall not be done between 10 p. m. and 6 a. m., nor upon any portion of Sunday.

6th. That persons with contagious diseases shall not be allowed to remain in laundries within the prescribed district.

7th. That any person who shall conduct a laundry within the designated district without obtaining the permission of the board of supervisors and a license from the license collector is liable to a maximum penalty of $1,000 fine and six months' imprisonment.

This ordinance, it will be observed, though burdensome and peculiar, prescribes the conditions upon which the board's per-
14 mission may be obtained, in this respect rising to a higher plane of justice and reason than that occupied by 1569 and 1587, where the applicant is commanded to seek the haven of supervisorial consent without chart or compass to protect him against the sunken rocks of discrimination.

On June 11th, 1883, they adopted an ordinance, numbered 1719, whereby the provision requiring the special consent of the supervisors was very properly dispensed with, and a provision requiring the certificates of the health officer and the board of fire wardens to be exhibited in some conspicous place at the laundry was added, it would seem, in lieu thereof, for, with these exceptions, orders 1691 and 1719 are identical in substance and similar in language.

Section 9 of this last order declares that "order No. 1691 and all orders or parts of order in conflict with any of the provisions of this order are hereby repealed."

On October 29th, 1883, by an ordinance numbered 1746, they amended section 1 of order 1719 by changing the limits of
15 the laundry district.

On March 5th, 1884, they adopted an ordinance, numbered 1762, which corrects the reference to certain preceding orders, but in all other respects follows the very language of order 1719 as amended by order 1746. This last-mentioned order, 1762, contains the following repealing clause, viz:

"Order No. 1691 and all orders or parts of orders in conflict with any of the provisions of this order are hereby repealed."

Section 1 of order 1719, adopted June 11th, 1883, the same section as amended October 29th, 1883, by order 1746, and the same section, in order 1762, of March 5th, 1884, dispenses with the special consent of the board of supervisors in the matter of conducting laundries within the given districts, and very naturally places the whole subject under the appropriate control of the health and
16 fire departments of the city government, with strict injunctions to the police department to see that the provisions of order 1762, the last of this long and changeful series, are strictly enforced.

VI.

And your petitioner further shows that, notwithstanding this

special consent of the supervisors has been dispensed with and fully supplanted by a more reasonable and efficient system, yet within a few weeks your petitioner and more than one hundred and fifty of his countrymen have been arrested upon the charge of carrying on business without having such special consent, while those who are not subjects of China, and who are conducting eighty-odd laundries under similar conditions, are left unmolested and free to enjoy the enhanced trade and profits arising from this hurtful and unfair discrimination. The business of your petitioner, and of those of his countrymen similarly situated, is greatly impaired, and in
17 many cases practically ruined by this system of oppression to one kind of men and favoritism to all others.

VII.

And your petitioner further shows that, though he was advised and satisfied that the law requiring the special consent of the board of supervisors had been substituted by another and was no longer in force, yet, as he and his countryman similarly situated were anxious to comply with every regulation, whether valid or invalid, active or extinct, that did not make compliance impracticable, he, your petitioner, and about two hundred others of his countryman, similiarly situated, humbly and respectfully petitioned the board of supervisors for permission to continue their business in the various houses which they had been occupying and using as laundries in many cases for more than twenty years. Though these petitions were couched in the most respectful language, and though it was made known to the board of supervisors that the petitioners had
18 complied with every regulation concerning health, safety, license tax, and everything else prescribed by the latest ordinances, especially order 1762, which is the last one on this subject, yet, notwithstanding all this, not a single one of the petitions presented by your petitioner and his countryman was granted, while not a single petition presented by persons who were not Chinese was refused, and yet the laundrymen who have thus been favored by the supervisors have no stronger claims to present, outside of race and national prejudice, than your petitioner and his countrymen, and your petitioner avers that the orders providing for this special consent were adopted for the purpose of discriminating against him and his countrymen, and that they are enforced so as to accomplish that result.

VIII.

And your petitioner further shows that the complaint filed against him for misdemeanor in the police court No. 2 of the city and
19 county of San Francisco on 22d day of August, 1885, charged him with violating section 1 of order 1569 and section 68 of order 1587; in other words, that he had conducted a laundry in a house not made of brick or stone, without having the special consent of the board of supervisors. Upon this complaint, notwithstanding the defense of your petitioner, he was convicted, and on

the 22 day of August, 1885, he was sentenced to pay a fine of ten dollars, and upon default thereof to be imprisoned one day for each one dollar of the said fine. Your petitioner having failed to pay the said fine was arrested and is now detained by Peter Hopkins, the sheriff of the city and county of San Francisco, under a commitment based upon the said judgment.

IX.

Your petitioner avers that his said imprisonment is unlawful, for the following reasons:

1st. The said ordinances requiring the special consent of
20 the supervisors to the maintenance of laundries in houses not made of brick or stone are not now in force and operative, because they have been substituted by others; they have been repealed, and they have lapsed by non-user.

2d. They were never valid because unreasonable in requiring the house to be but one story in height, and to be constructed of only two kinds of incombustible material, viz., brick and stone. They are also unreasonable because they require the special consent of the very body that has declared the matter a nuisance, and prohibited it under the extremest penalty at their disposal.

3d. They were never valid because they enlarge the law of nuisance without authority, and thereby and thereunder the destruction of property rights is accomplished without indemnification or due process of law. An ancient laundry is declared a nui-
21 sance by legislative edict, and the courts, in which the question of nuisance or no nuisance should be tried, are employed simply to graduate and apply the punishment, and thus give emphasis to the legislative judgment that it is a nuisance.

4th. They were never valid because the supervisors have not, under sec. 11, art. XI, of the State constitution, or under sub. 9, sec. 74, of the consolidation act, as alleged in the preamble to some of their ordinances on this subject, the power to constitute and declare the necessary process of clothes-washing a nuisance, nor have they such power under any other provisions of the constitution of the State or the charter of the city. Whether the maintenance of a laundry be a public nuisance or not is a mixed question of law and fact, to be determined in the courts, with reasonable opportunity to the accused to make defense as to this vital and essential question.

While under the supplement to the consolidation act, ap-
22 proved March 16th, 1876, the board of health is authorized by the Legislature of the State to abate nuisances, yet neither the board of health nor the board of supervisors is clothed with the sovereign power to define and declare what shall constitute a nuisance.

5th. They were never valid because requiring the laundryman to obtain the special consent of the supervisors without prescribing the conditions with which applicants must comply in order to deserve such consent does not constitute a "regulation or order" within the meaning of those terms as used in sec. 74 of the consolidation act. The legislative will, instead of taking the form of an expressed rule

of conduct, is held in reserve; and such action does not amount to the "regulation or order" which the board is authorized to make, and which they are required to publish for the information and guidance of the people. It is the same as if the supervisors had, by ordinance, declared that they would not make known the
23 terms and conditions upon which clothes-washing for hire might be carried on throughout the broad limits of San Francisco city and county in houses built of materials other than brick or stone, but that each particular one of hundreds of cases must be left to and be determined by the unmanifested and capricious will of the board.

6th. They are invalid because as constituted and enforced they deprive persons of liberty and property rights without due process of law, and deny to persons the equal protection of the laws contrary to section 1 of the 14th Amendment to the Constitution of the United States.

7th. They are invalid because as constituted they are calculated to be and are so enforced as to discriminate against your petitioner and his countrymen, contrary to the provisions of section 1977 of the Revised Statutes of the United States.

24 8th. They are invalid because as constituted they are calculated to be and are so enforced as to discriminate against your petitioner and his countrymen, contrary to existing treaty stipulations between the United States and China.

Wherefore your petitioner prays that a writ of habeas corpus may be granted, directed to the said Peter Hopkins, sheriff of the city and county of San Francisco, commanding him to have the body of your petitioner before your honors at a time and place therein to be specified, to do and receive what shall then and there be considered by your honors concerning your petitioner, together with the time and cause of his detention and said writ, and that your petitioner may be restored to his liberty.

This application is made to your honors with the humble request that it may be heard in bank, because judges of the superior
25 court have ruled differently on the questions involved, and one of the departments of your honors' court has heretofore had some of the above points before it, and ruled thereon adversely to the position taken by your petitioner.

YICK WO, *Petitioner.*

L. H. VAN SCHAICK AND
D. L. SMOOT,
Attorneys for Petitioner.

STATE OF CALIFORNIA, }
City and County of San Francisco, } ss:

Yick Wo, being duly sworn, says that he is the petitioner named in the foregoing petition; that he has heard read the said petition and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated on his information or belief, and as to those matters that he believes it to be true.

YICK WO.

Subscribed and sworn to before me this 22nd day of August, 1885.

JAMES LAWLER,

Judge of the Police Judges' Court No. 2 of said City and County.

26 Let a writ issue as prayed for, returnable before this court, in bank, on the 4th day of Sept., 1885, at ten o'clock a. m. Let petitioner be admitted to bail in the sum of $100.

R. F. MORRISON,

Chief Justice.

Endorsed: Filed August 24th, 1885. J. W. McCarthy, clerk, by J. S. Williams, deputy.

27 *Submission of Cause.*

In the Supreme Court, State of California. In Bank.

In Re YICK WO on *Habeas Corpus.*

1885, Sept. 4th.—Argued. Petitioner allowed 15 days to file brief; respondent 10 to reply. Cause to be thereon submitted.

Sept. 24th.—Filed petitioner's brief.

Oct. 3.—Filed respondent's brief and submitted.

28 *Judgment.*

In bank.

In Re YICK WO. No. 20126.

Petition for writ of *habeas corpus.*

DECEMBER 28TH, 1885.

And now at this day this cause being called, and having been heretofore submitted and taken under advisement by the court, and all and singular the law and premises being by the court here seen, heard, understood, and fully considered, the opinion of the court herein is delivered by the court.

Whereupon it is now considered, ordered, adjudged, and decreed by the court here that the petitioner in the above-entitled cause be, and he hereby is, remanded to the custody of the sheriff.

29 *Opinion.* (*Filed December* 28, 1885.)

In Bank.

In Re YICK WO on *Habeas Corpus.* No. 20126.

1. Yick Wo, a native of China, came to the United States in 1861, and for twenty-two years last past has been engaged in the laundry business at 349 Third street, San Francisco.

2. Petitioner is an alien and a subject of the Emperor of China.

The petition for a writ of *habeas corpus* was filed August 24, 1885, and a writ issued returnable September 4, 1885. The return shows that petitioner is held by the respondent, as sheriff of the city and county of San Francisco, under a conviction and sentence for a viola-

tion of section 1 of order 1569, and section 68 of order 1587 of the board of supervisors of the city & county of San Francisco.

Ordinance, or order, No. 1569 of the board of supervisors, under which petitioner was convicted, is in the following language:

Order No. 1569,

30 "Prescribing the kind of buildings in which laundries may be located.

The people of the city and county of San Francisco do ordain as follows:

"SECTION 1. It shall be unlawful from and after the passage of this order for any person or persons to establish, maintain or carry on a laundray within the corporate limits of the city and county of San Francisco, without having first obtained the consent of the board of supervisors, except the same be located in a building constructed either of brick or stone.

"SEC. 2. It shall be unlawful for any person to erect, build, or maintain, or cause to be erected, built, or maintained over or upon the roof of any building now erected, or which may hereafter be erected, within the limits of said city and county, any scaffolding without first obtaining the written permission of the board of supervisors, which permit shall state fully for what purpose said
31 scaffolding is to be erected and used, and said scaffolding shall not be used for any other purpose than that designated in such permit.

"SEC. 3. Any person who shall violate any of the provisions of this order shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than $1,000, or by imprisonment in the county jail not more than six months, or by both such fine and imprisonment.

"In board of supervisors, San Francisco, May 24, 1880.

"After having been published five successive days, according to law, taken up and passed by the following vote:

"Ayes—Supervisors Schottler, Mason, Litchfield, Drake, Whitney, Eastman, Fraser, Taylor, Doane, Bayley, Torrey, Stetson.

"Approved, San Francisco, May 26, 1880.

"JNO. A. RUSSELL, *Clerk.*

"I. S. KALLOCH,

32 "*Mayor and ex-officio President Board Supervisors.*"

Section 68 of order 1587, passed July 28, 1880, is in substance and effect the same as section 1 of No. 1569, quoted above.

It is admitted that petitioner had a license, a certificate from the board of fire wardens, and a certificate from the health officer, copies of which are on file.

It is further admitted that petitioner applied to the board of supervisors, June 1, 1885, for consent of said board to maintain and carry on his laundry, but that said board refused said consent.

By section 2 of article XI of the constitution of this State it is provided that "any county, city, town, or township may make and en-

force within its limits all such local, police, sanitary, and other regulations as are not in conflict with general laws."

B- section 74 of the act of April 19, 1856, usually known
33 as the consolidation act, the board of supervisors is empowered, among other things, "to provide by regulation for the prevention and summary removal of nuisances to public health, the prevention of contagious diseases; * * * to prohibit the erection of wooden buildings within any fixed limits where the streets shall have been established and graded; * * * to regulate the sale, storage, and use of gunpowder or other explosive or combustible materials and substances, and make all needful regulations for protection against fire; to make such regulations concerning the erection and use of buildings as may be necessary for the safety of the inhabitants."

"Unwholesome trades, slaughter-houses, operations offensive to the senses, the deposit of powder, the application of steam-power to propel cars, the building with combustible materials, and the burial of the dead may all," says Chancellor Kent, "be interdicted
34 by law, in the midst of dense masses of population, on the general and rational principal that every person ought to so use his property as not to injure his neighbors, and that private interests must be made subservient to the general interests of the community."

(Kent's Com., vol. 11, page, 340.)

Every citizen holds his property subject to the proper exercise of the powers and restrictions above referred to.

A large proportion of the laws and ordinances relating to the comfort, safety, health, convenience, good order, and general welfare of the inhabitants of cities and towns, and which we style police laws or regulations, have the effect, in a greater or less degree, to disturb and curtail individual enjoyment and personal rights.

For the injury which the citizen suffers he is, in contemplation of law, compensated by his share in the general benefits flowing
35 from the regulations found essential to the general welfare. It is but a reasonable restraint upon the use of property in those cases where its unlimited use or enjoyment would produce serious mischief to others.

The right to establish fire limits and to interdict the construction of wooden buildings within certain specified bounds is a familiar exercise of the authority usually conferred upon municipal corporations.

In towns like San Francisco, constructed largely of wood, the danger from fire is ever present and overshadowing.

It is not, therefore, strange that the Legislature, in conferring certain powers upon the municipal authorities of the city, included not only the authority to regulate the erection, but also the use of buildings so far as necessary for the safety of the inhabitants.

To prevent the construction of wooden buildings within the densely inhabited portions of a city may become an impera-
36 tive duty on the part of the authorities. They may not destroy those already erected. But the use of wooden structures

within given limits for specific and highly dangerous purposes may become quite as detrimental as the erection of new structures of the same character, and as the power of regulation extends to the use as well as to the erection of wooden buildings we can discern no assumption of unwarranted authority in the order No. 1569 which interdicts the establishing, maintaining, or carrying on laundries, except by consent of the board of supervisors, save in brick or stone buildings. The business of conducting a laundry involves a constant use of fires under circumstances, and perhaps by persons, liable to result in conflagrations. Of these facts the supervisors are the judges.

In given instances, under favorable circumstances, the danger of fire from this business may be reduced to a minimum or may not at all jeopardize the surrounding property.

37 In this last class of cases no objection can be seen why permits should not be granted as provided for in order 1569. It has been the practice in municipal corporations to vest the granting of licenses for a variety of objects in the discretion of the corporate authorities, or some of them. Without such authority boards of health and various other agencies by which the lives and health of citizens and the safety and due enjoyment of their property are protected would be powerless for good.

The argument that the discretion to permit the establishment of laundries in wooden buildings by the supervisors is liable to abuse cannot be held conclusive. No doubt all power is liable to abuse, wheresoever lodged.

In theory, however, as well as in ordinary practice, the persons selected to discharge governmental duties by reason of supposed qualifications for the several positions in which they are placed will be found to possess the capacity and integrity essential

38 to a proper administration of the trust reposed in them.

If they prove deficient in these qualifications the evil cannot be remedied by invalidating their acts performed by virtue of authority vested in them, or where they have exercised discretionary powers by impugning their judgment or motives rather than their right to exercise the discretion.

The board of supervisors, under the several statutes conferring authority upon them, has the power to prohibit or regulate all occupations which are against good morals, contrary to public order and decency, or dangerous to the public safety.

Clothes-washing is certainly not opposed to good morals or subversive of public order or decency, but when conducted in given localities it may be highly dangerous to the public safety. Of this fact the supervisors are made the judges, and having taken action in the premises we do not find that they have prohibited the

39 establishment of laundries, but that they have, as they well might do, regulated the places at which they should be established, the character of the buildings in which they are to be maintained, etc.

The process of washing is not prohibited by thus regulating the places at which and the surroundings by which it must be exercised.

The order No. 1569 and section 68 of order No. 1587 are not in contravention of common right or unjust, unequal, partial, or oppressive in such sense as authorizes us in this proceeding to pronounce them invalid.

It is next contended that order No. 1569 and section 68 of order 1587 are repealed by order No. 1767, adopted April 8, 1884, and which is in the following language:

Order No. 1767.

"Regulating the establishment and maintenance of public laundries and public wash-houses within certain limits in the city and county of San Francisco.

(Preamble.)

"Whereas the indiscriminate establishment of public laundries
40 and public wash-houses, where clothes and other articles are cleansed for hire, is injurious and dangerous to public health and public safety, and prejudicial to the well-being and comfort of the community, and depreciates the value of property in those neighborhoods where such public laundries and such public wash-house-houses are situate:

"Under and in conformity to the authority vested by section 11 of article XI of the constitution of the State of California, and of subdivision 9 of section 74 of an act entitled 'An act to repeal the several charters of the city of San Francisco, to establish the boundaries of the city and county of San Francisco, and to consolidate the government thereof,' approved April 19, 1856, and the several acts amendatory thereto and supplementary thereof—

"The people of the city and county of San Francisco do ordain as follows:

(Limits defined.)

"SECTION 1. On and after the passage of this order it shall be unlawful for any person or persons to establish, maintain, or
41 carry on the business of a public laundry or a public wash-house, where clothes or other articles are cleansed for hire, within that portion of the city and county of San Francisco lying and being within the following boundaries: Commencing at the intersection of Devisadero street with the waters of the Bay of San Francisco; thence following the bay shore easterly and southerly to the easterly end of Channel street; thence along Channel street in a westerly direction to Potrero avenue; thence southerly along Potrero avenue to Army street; thence westerly along Army street to Dolores street; thence northerly along Dolores street to and across Market street to Ridley street; thence westerly along Ridley street to Devisadero street, and thence northerly along Devisadero street to the bay and point of commencement, without having first complied with the conditions hereinafter specified."

(Persons conducting laundries must obtain certificates from health officer and fire wardens as to the condition of premises.)

"SEC. 2. It shall be unlawful for any person or persons to
42 conduct or maintain a public laundry or wash-house within the district named in section 1 of this order without having first obtained a certificate signed by the health officer of the city and county of San Francisco that the premises are properly and sufficiently drained, and that all proper arrangements for carrying on the business without injury to the sanitary condition of the neighborhood have been complied with, and particularly that the provisions of section 4 of order No. 1587 of this board have been complied with; also a certificate signed by the board of fire wardens of the city and county of San Francisco that the stoves, washing and drying apparatus, and the appliances for heating smoothing-irons are in good condition, and that their use is not dangerous to the surrounding property from fire, and that all proper precautions have been taken to comply with the provisions of order No. 1752, 'to de-
fine the fire limits of the city and county of San Francisco
43 and making regulations concerning the erection and use of buildings in said city and county.'"

(Certificate of health officer and board of fire wardens in regard to laundries, etc.; no charge to be made therefor:)

"SEC. 3. It shall be the duty of the health officer, also of the board of fire wardens, respectively, upon application from any person or persons proposing to open or conduct the business of a public laundry within that portion of this city and county designated and described in section 1 of this order, to inspect the premises in which it is proposed to carry on said business, or in which said business is being carried on, with a view to ascertaining whether the said premises are provided with proper drainage and sanitary appliances; also whether the provision of ordinance No. 1752 of this board has been complied with, and, if found in all respects satisfactory, then to issue to said applicants the certificates provided for in section 2 of this order.

"No charge whatever shall be made or compensation or
44 fee collected or received for the performance of any of the services required by the provisions of this order in the inspection of premises or the issuance of a certificate, but all such services shall be performed free of charge."

(Times at which laundry work may not be performed:)

"SEC. 4. No person or persons owning or employed in the public laundries or public wash-houses provided for in section 1 of this order shall wash or iron clothes between the hours of 10 o'clock p. m. and 6 o'clock a. m., nor upon any portion of that day known as Sunday."

(No person suffering from infectious diseases to be permitted to sleep, lodge, or remain in any public laundry:)

"SEC. 5. No person or persons engaged in the laundry business within that portion of this city described in section 1 of this order shall permit any person suffering from any infectious or contagious

disease to lodge, sleep, or remain within or upon the premises used by him, her, or them for the purposes of a public laundry."

45 (Penalty:)

"SEC. 6. Any person or persons establishing, maintaining, or carrying on the business of a public laundry or a public washhouse, where clothes or other articles are cleansed for hire, within the limits of this city and county, as described in section 1 of this order, without first having complied with the provisions of section 2 of this order, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than $1,000 or by imprisonment of not more than six months, or by both; and any person who shall violate any of the provisions of sections 4 and 5 of this order shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than $5 nor more than $50 or by imprisonment not more than one month, or by both such fine and imprisonment."

(Certificates of health officer and board of fire commissioners to be exhibited in a conspicuous place:)

46 "SEC. 7. The certificates from the health officer and the board of fire wardens, as required by section 2 of this order, shall be exhibited in some conspicuous place on the premises, and the same shall be produced on the demand of any officer of the city and county of San Francisco."

(Police to enforce provisions of order:)

"SEC. 8. The police authorities are hereby directed to have the provisions of this order strictly enforced."

(Repeal of all conflicting orders:)

"SEC. 9. Order No. 1691 and all orders or parts of orders in conflict with any of the provisions of this order are hereby repealed.

"IN BOARD OF SUPERVISORS,
"SAN FRANCISCO, *April* 7, 1884.

"After having been published five successive days, according to law, taken up and passed by the following vote:

"Ayes—Supervisors Sullivan, Reichenbach, Shirley, Burton, Smith, Pond, Griffin, Strother, Lewis, Ranken, James, Ashworth.

"Absent—Supervisor Pond.

47 "JNO. A. RUSSELL, *Clerk.*

"Approved, San Francisco, April 8, 1884.
"WASHINGTON BARTLETT,
"*Mayor and ex-officio President Board of Supervisors.*"

The rule for the construction of ordinances and orders of a municipal corporation are the same as for the statutes of the Legislature.

The civil code of this State (section 20) affords no guide for determining the question of the repeal of the acts of municipal cor-

porations, except so far as its rules enunciate general principles alike applicable to all statutory enactments, general and local.

The law does not favor the repeal of statutes by implication, and where there is an apparent conflict between two acts the court should reconcile them if possible, but if this cannot be done, then the last act must govern. (Schofield *vs.* White, 7 Cal., 400; People *vs.* R. R. Co., 28 Cal., 254.)

Where a subsequent statute is repugnant to a prior one, the latter operates without any repealing clause, as a repeal of the
48 former, or where not repugnant, if it clearly appears from the latter that it was intended as a revision or substitute for the former, it will repeal it so far as revised or substituted. (Pierpont *vs.* Crouch, 10 Cal., 315.)

In order for a subsequent act to repeal a former it should appear from the last act that it was intended to take the place of or repeal the former, or that the two acts are so inconsistent that force and effect cannot be given to both. (*Ex parte* Smith, 40 Cal., 419. Estate of Wixam, 35 *id.*, 320. People *vs.* Burt, 43 *id.*, 560. People *vs.* Sargent, 44 *id.*, 430.)

Section 9 of the order No. 1767 expressly repeals "Order No. 1691 and all orders or parts of orders in conflict with any of the provisions of this order."

It follows that order No. 1569 is not expressly repealed, unless there is a conflict between its provisions and those of the later order or orders.

We may dismiss some intermediate orders of the board from
49 observation, for the reason that we find in them no support for the contention of petitioner not contained in No. 1767.

We fail to find in order No. 1767 evidence of any such repugnance or conflict with No. 1569 as to warrant the conclusion that the latter is repealed by implication.

They may with propriety both stand together. No. 1767 fixes the limits within which a public laundry or wash-house shall not be carried on without complying with certain conditions therein specified. These conditions relate to certificates to be procured from the health officer as to drainage and sanitary conditions, and from the board of fire wardens, showing the stoves, washing and drying apparatus are in good condition and not dangerous to surrounding property from fire, etc.

The order also fixes and designates certain hours of the
50 night within which washing and ironing shall not be carried on.

The prominent feature of the order consists in the limits which it fixes within which certain restrictions apply. All of these provisions may with propriety be enforced, and the necessity still exist, in the diversely settled portions of the town, for this business to be conducted only in buildings of brick or stone.

As order No. 1569 is not expressly repealed by order 1767, and as the latter is not repugnant to or inconsistent with the former, we are of opinion it did not repeal the former by implication, and that section 1 of order No. 1569 is still in full force and effect and appli-

cable alike to all clases and conditions of men engaged or to engage in the business therein indicated.

We have not deemed it necessary to discuss the question in the light of supposed infringement of petitioner's rights under the
51 Constitution of the United States, for the reason that we think the principles upon which contention on that head can be based have in effect been set at rest by the cases of Barbier *vs.* Connolly, 113 U. S. R., 27, and Soon Hing *vs.* Crowley, *id.*, 703.

That this class of orders are not repugnant to our State constitution need not be discussed, as their validity with reference to that instrument has been sustained in *Ex-parte* Mount, 5, West Coast Reporter 575; *Ex-parte* Moynier, 65 Cal., 33; *Ex-parte* Walters, *id.*, 269.

A regulation which applies alike to all persons engaged in a given pursuit without distinction as to nationality, residence, age, sex, or condition is not, when otherwise regular and valid, subject to the criticism of being in violation of treaty obligations existing between the United States and China.

We are of opinion the petitioner should be remanded to the custody of the sheriff.

SEARLS, *C.*

We concur.

BELCHER, *C. C.*
FOOTE, *C.*

52 By the COURT:

For the reasons given in the foregoing opinion the petitioner is remanded to the custody of the sheriff.

53 *Bond.*

In the Supreme Court of the United States.

YICK WO, Plaintiff in Error,
against
PETER HOPKINS, Sheriff of the City and County of San Francisco, Defendant in Error.

Know all men by these presents that we, Yick Wo, Timothy F. Scott, and Ho Chong, of the city and county of San Francisco, State of California, are held and firmly bound unto Peter Hopkins, of said city and county, in the sum of five hundred dollars, lawful money of the United States, to be paid to the said Peter Hopkins, his executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals. Dated this 29th day of January, 1886.

54 Whereas the above-named Yick Wo hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered by the supreme court of the State of California in a certain proceeding wherein said Yick Wo was petitioner and said Peter Hopkins was respondent:

Now, therefore, the condition of this obligation is such that if the said above-named Yick Wo shall prosecute his said writ of error to effect and answer all costs if he shall fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and effect.

YICK WO. [SEAL.]
TIMOTHY F. SCOTT. [SEAL.]
HO CHONG. [SEAL.]

Sealed and delivered in presence of—
L. H. VAN SCHAICK.

STATE OF CALIFORNIA, }
City and County of San Francisco, } *ss:*

Timothy F. Scott and Ho Chong, being duly sworn each for himself, deposes and says that he is a resident of the city and
55 county of San Francisco, in the State of California, and is worth the sum of five hundred dollars exclusive of property exempt from execution and over and above all debts and liabilities.

TIMOTHY F. SCOTT.
HO CHONG.

Subscribed and sworn to before me this 29th day of January, 1886.

R. F. MORRISON,
Chief Justice of California.

The form of the within bond and the sufficiency of the sureties therein is hereby approved.
Dated January 29th, 1886.

R. F. MORRISON,
Chief Justice of Cal.

Endorsed: Filed January 29th, 1886. J. D. Spencer, clerk, by J. S. Williams, deputy.

56 UNITED STATES OF AMERICA, *ss:*

To Peter Hopkins, sheriff of the city and county of San Francisco, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held at the city of Washington, in the District of Columbia, on the eleventh day of October, A. D. 1886, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of California, *in re* Yick Wo on *habeas corpus*, wherewith Yick Wo is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment and order in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Robert F. Morrison, chief justice of the supreme court of the State of California, this 29th day of Janu-

ary, A. D. 1886, and of the Independence of the United States the one hundred and tenth.

[Seal Supreme Court of California.]

R. F. MORRISON,
Chief Justice of California.

56½ Service of the within citation is hereby admitted this 29th day of January, A. D. 1886.

ALFRED CLARKE,
Attorney for Respondent.

[Endorsed:] 20126. [In pencil:] Original. In the Supreme Court of the United States. Yick Wo, pl'ff in error, *vs.* Peter Hopkins, sheriff and def't in error. Citation. Filed January 29, 1886. J. D. Spencer, clerk, by J. S. Williams, deputy.

57 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the justices of the supreme court of the State of California, Greeting:

Because in the record and proceedings and also in the rendition of a judgment of a plea which is in the said supreme court before you, between Yick Wo, plaintiff in error, and Peter Hopkins, sheriff of the city and county of San Francisco, defendant in error, a manifest error hath happened, to the great damage of the said plaintiff in error, as by his complaint appears, and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the city of Washington, District of Columbia, on the second Monday of October next, in the said U. S. Supreme Court to be there and then held, that, the record and proceedings aforesaid be[ing] inspected, the said U. S. Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 20th day of January, in the year of our Lord one thousand eight hundred and eighty-six and of the Independence of the United States the one hundred and tenth.

[The Seal of the Circuit Court, District of Cala.]

L. S. B. SAWYER,
Clerk U. S. Circuit Court, Dist. Cal.

The above writ of error is hereby allowed.

R. F. MORRISON,
Chief Justice of California.

57½ [Endorsed:] 20126. [In pencil:] Original. United States Supreme Court. Yick Wo, pl'ff in error, *vs.* Peter Hopkins, sheriff, &c., def't in error. Writ of error. Filed January 29, 1886. J. D. Spencer, clerk, by J. S. Williams, deputy.

58 *Return to Writ Habeas Corpus.*

STATE OF CALIFORNIA, }
City and County of San Francisco, } ss:

In the Supreme Court of the State of California.

The people of the State of California to Peter Hopkins, sheriff of the city and county of San Francisco, Greeting:

We command you that you have the body of Yick Wo, by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name said Yick Wo shall be called or charged, before the hon. the supreme court of the State of California sitting in bank, at the court-
59 room thereof in the city and county of San Francisco, on the 4th day of September, A. D. 1885, at 10 o'clock a. m. of that day, to do and receive what shall then and there be considered concerning the said Yick Wo; and have you then and there this writ.

By order of—

R. F. MORRISON.

Witness the Hon. R. F. Morrison, chief justice of the supreme court aforesaid, with the seal thereof hereto affixed, this 24th day of August, A. D. 1885.

Attest: J. W. McCARTHY, *Clerk*,
[SEAL.] By J. S. WILLIAMS, *Deputy*.

Due service of the within writ is hereby acknowledged.

Aug. 24th, 1885.

PETER HOPKINS, *Sheriff*,
By JERE J. DRISCOLL,
Under Sheriff.

J. N. E. WILSON,
District Att'y.

60 To the hon. the supreme court:

The respondent respectfully shows that he is the sheriff of the city and county of San Francisco and that he holds Yick Wo as follows:

That on the 26th day of May, 1880, the board of supervisors passed an order, No. 1569, which order is as follows:

Order No. 1569,

Prescribing the kind of buildings in which laundries may be located.

The people of the city and county of San Francisco do ordain as follows:

SECTION 1. It shall be unlawful, from and after the passage of this order, for any person or persons to establish, maintain, or carry on

a laundry within the corporate limits of the city and county
61 of San Francisco without having first obtained the consent of the board of supervisors, except the same be located in a building constructed either of brick or stone.

SECTION 2. It shall be unlawful for any person to erect, build, or maintain, or caused to be erected, built, or maintained, over or upon the roof of any building now erected or which may hereafter be erected within the limits of said city and county, any scaffolding without first obtaining the written permission of the board of supervisors, which permit shall state fully for what purpose said scaffolding is to be erected and used, and such scaffolding shall not be used for any other purpose than that designated in such permit.

SECTION 3. Any person who shall violate any of the provisions of this order shall be deemed guilty of a misdemeanor, and
62 upon conviction thereof shall be punished by a fine of not more than one thousand dollars or by imprisonment in the county jail not more than six months, or by both such fine and imprisonment.

IN BOARD OF SUPERVISORS,
SAN FRANCISCO, *May* 24, 1880.

After having been published five successive days, according to law, taken up and passed by the following vote:

Ayes—Supervisors Schottler, Mason, Litchfield, Drake, Whitney, Eastman, Fraser, Taylor, Doane, Bayly, Torrey, Stetson.

JNO. A. RUSSELL, *Clerk.*

Approved. I. S. KALLOCH,
Mayor and Ex-officio President Board of Supervisors.

San Francisco, May 26, 1880.

63 That on the 28th day of July, 1880, said board passed an order, No. 1587, of which order paragraph 68 is as follows:

SECTION 68. It shall be unlawful from and after the passage of this order for any person or persons to establish, maintain, or carry on a laundry within the corporate limits of the city and county of San Francisco without having first obtained the consent of the board of supervisors, except the same be located in a building constructed either of brick or stone.

That on the 22nd day of August, 1885, Yick Wo was arrested on a complaint, a copy of which is as follows:

In the Police Judges' Court No. 2 of the City and County of San Francisco, State of California.

STATE OF CALIFORNIA, } *ss:*
City and County of San Francisco, }

64 THE PEOPLE OF THE STATE OF CALIFORNIA *against* YICK WO.

Personally appears before me this 22nd day of August, A. D. 1885, James McNamara, who on oath makes complaint, and deposes and

says that on the 21st day of August, A. D. 1885, in the city and county of San Francisco, State of California, the crime of misdemeanor was committed, to wit, by Yick Wo (whose real name is unkown to this complainant), who then and there did wilfully and unlawfully carry on a certain laundry within the corporate limits of the city and county of San Francisco, to wit, at No. 349 Third street, without first having attained the consent of the board
65 of supervisors of said city and county so to do; said laundry being then and there carried on in a building not constructed of brick or stone, thereby violating the provisions of section 1 of order No. 1569 and section 68 of order No. 1587 of the board of supervisors of the city and county of San Francisco, contrary to the form, force, and effect of the statute in such cases made and provided, and against the peace and dignity of the people of the State of California; and this complainant upon oath accuses the said Yick Wo of having committed the said crime; and this complainant further alleges and deposes that the said accused was then and there arrested therefor in the actual commission of the said offence, and prays that the said accused may be brought before a magistrate and dealt with according to law.

JAS. McNAMARA.

66 Subscribed and sworn to before me this 22nd day of August, A. D. 1885.

JAMES LAWLER,
Judge of the Police Judges' Court No. 2
of the City and County of San Francisco.

That thereafter said Yick Wo was convicted of violating said order and committed to the custody of respondent under a commitment, a copy of which is hereto annexed and made a part of this return.

P. HOPKINS, *Sheriff*,
By JERE J. DRISCOLL,
Under Sheriff.
ALFRED CLARKE,
Special Counsel for the Municipality of San Francisco.

67 *Commitment.*

In the Police Judges' Court No. 2 of the City and County of San Francisco.

STATE OF CALIFORNIA, }
City and County of San Francisco, } *ss:*

THE PEOPLE OF THE STATE OF CALIFORNIA *vs.* YICK WO.

The people of the State of California to the sheriff of the city and county of San Francisco, Greeting:

Whereas Yick Wo having been duly convicted in the police judges' court No. 2 of the city and county of San Francisco, State of California, of the crime of misdemeanor as charged in the complaint

upon oath, in the above-entitled criminal action, and by said
68 court sentenced and adjudged, as a punishment for said crime, to pay a fine of ten (10) dollars, and in default of payment of said fine to be imprisoned in the county jail of the city and county of San Francisco, State of California, at the rate of one day for each one dollar of said fine until said fine is satisfied, as appears by the following full, true, and correct copy of the judgment rendered by said court and entered in the minutes and docket of said court in the above-entitled criminal action.

"*Minute Docket.*"

In the Police Judges' Court No. 2 of the City and County of San Francisco, State of California.

In open court.

STATE OF CALIFORNIA, }
City and County of San Francisco, } *ss:*

COURT-ROOM OF SAID COURT,
69 SATURDAY, *August* 22, 1885.

Present: presiding, Hon. James Lawler, judge of the police judges' court No. 2.

THE PEOPLE OF THE STATE OF CALIFORNIA *vs.* YICK WO.

Convicted of misdemeanor.

In this action the defendant personally appears for sentence. The court renders its judgment that whereas the said Yick Wo, having been duly convicted in this court of the crime of misdemeanor, it is ordered and adjudged as a punishment therefor that the said Yick Wo pay a fine of ten (10) dollars, and in default of pay-
70 ment thereof that said Yick Wo be imprisoned in the county jail of this city and county at the rate of one day for each one dollar of fine until said fine is satisfied.

And whereas said fine has not been paid, these are, therefore, in the name of the people of the State of California, to command you, the said sheriff of the city and county of San Francisco, forthwith to take, arrest, and safely keep and imprison the said Yick Wo in the county jail of the said city and county of San Francisco, State of California, at the rate of one day for each one dollar of said fine until said fine is satisfied, and these presents shall be your authority for the same.

Witness my hand and the seal of the said police judges' court No. 2 this 22d day of Aug., 1885.

[SEAL.] JAMES LAWLER,
Judge of the Police Judges' Court No. 2 of the City and County of San Francisco.

71 Endorsed: Filed August 24th, 1885. J. W. McCarthy, clerk, per J. S. Williams, deputy.

Provided, however, That the provisions of this order shall not be deemed to apply to portable stoves, furnaces, or lamps used by artisans in the prosecution of their regular and lawful business, or to properly-constructed kerosine, gasoline, or gas stoves used for cooking purposes or for the heating of chambers.

79 SECTION 2. Any person or persons violating the provisions of this order shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding one hundred dollars or by imprisonment for a period not exceeding thirty days, or by both such fine and imprisonment.

SECTION 3. It shall be the duty of the fire wardens and the chief of police to take such steps and issue such orders to the members of the force under their control, respectively, as shall insure the arrest and punishment of any and all persons violating the provisions of this order.

Order No. 1719, *as Amended by* 1746,

Regulating the establishment and maintenance of public laundries and public wash-houses within certain limits in the city and county of San Francisco.

80 Whereas the indiscriminate establishment of public laundries and public wash-houses, where clothes and other articles are cleansed for hire, is injurious and dangerous to public health and public safety, and prejudicial to the well-being and comfort of the community, and depreciates the value of property in those neighborhoods where such public laundries and such public wash-houses are situate:

Under and in conformity to the authority vested by section 11 of article XI of the constitution of the State of California, and of subdivision 9 of section 74 of an act entitled "An act to repeal the several charters of the city of San Francisco, to establish the boundaries of the city and county of San Francisco, and to consolidate the government thereof," approved April 19, 1856, and the several amendatory thereto and supplementary thereof, the people of

81 the city and county of San Francisco do ordain as follows:

SECTION 1 (as amended Nov. 6, 1883, by order No. 1746). On and after the passage of this order it shall be unlawful for any person or persons to establish, maintain, or carry on the business of a public laundry or a public wash-house where clothes or other articles are cleansed for hire within that portion of the city and county of San Francisco lying and being within the following boundaries: Commencing at the intersection of Devisadero street with the waters of the Bay of San Francisco; thence following the bay shore easterly and southerly to the easterly end of Channel street; thence along Channel street in a westerly direction to Potrero avenue; thence southerly along Potrero avenue to Army street; then- westerly along Army street to Dolores street; thence northerly along Dolores street to and across Market street to Ridley street; thence westerly along Ridley street to Devisadero street, and thence northerly along

82 Devisadero street to the bay and point of commencement without having first complied with the conditions hereinafter specified.

SECTION 2. It shall be unlawful for any person or persons to conduct or maintain a public laundry or wash-house within the district named, section 1 of this order, without having first obtained a certificate signed by the health officer of the city and county of San Francisco that the premises are properly and sufficiently drained, and that all proper arrangements for carrying on the business without injury to the sanitary condition of the neighborhood have been complied with, and particularly that the provisions of section 4 of order No. 1666 of this board have been complied with; also a certificate signed by the board of fire wardens of the city and county of San Francisco that the stoves, washing and drying apparatus, and the appliances for heating smoothing irons are in good condition, and that their use is not dangerous to the surrounding prop-

83 erty from fire, and that all proper precautions have been taken to comply with the provisions of order No. 1617, defining "the fire limits of the city and county of San Francisco, and making regulations concerning the erection and use of buildings in said city and county," and of order No. 1670, "prohibiting the kindling, maintenance, and use of open fires in houses."

SEC. 3. It shall be the duty of the health officer, also the board of fire wardens, respectively, upon application from any person or persons proposing to open or conduct the business of a public laundry within that portion of the city and county designated and described in section 1 of this order, to inspect the premises in which it is proposed to carry on said business or in which said business is being carried on, with a view of ascertaining whether the said premises are provided with proper drainage and sanitary appliance-, also

84 whether the provisions of orders Nos. 1617 and 1670 of this board have been complied with, and, if found in all respects satisfactory, then to issue to said applicants the certificates provided for in section 2 of this order.

No charge whatever shall be made, or compensation or fee collected or received, for the performance of any of the services required by the provisions of this order in the inspection of premises or the issuance of a certificate, but all such services shall be performed free of charge.

SEC. 4. No person or persons owning or employed in the public laundries or public wash-houses provided for in section 1 of this order shall wash or iron clothes between the hours of 10 o'clock p. m. and 6 o'clock a. m., nor upon any portion of that day known as Sunday.

SEC. 5. No person or persons engaged in the laundry business within that portion of this city described in section 1 of this

85 order shall permit any person suffering from any infectious or contagious disease to lodge, sleep, or remain within or upon the premises used by him, her, or them for the purposes of a public laundry.

SEC. 6. Any person or persons establishing, maintaining, or carry-

ing on the business of a public laundry or a public wash-house, where clothes or other articles are cleansed for hire, within the limits of this city and county, as described in section 1 of this order, without first having complied with the provisions of section 2 of this order, shall be guilty of misdemeanor, and upon conviction thereof shall be punished by a fine of not more than one thousand dollars or by imprisonment of [not] more than six months, or by both: and any person who shall violate the provisions of section 4 or 5 of this order shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than five dollars nor
86 more than fifty dollars or by imprisonment not more than one month, or by both such fine and imprisonment.

SEC. 7. The certificates from the health officer and the board of fire wardens, *are* required by section 2 of this order, shall be exhibited in some conspicuous pacce on the premises, and the same shall be produced on the demand of any officer of the city and county of San Francisco.

SEC. 8. The police authorities are hereby directed to have the provisions of this order strictly enforced.

SEC. 9. Order No. 1691 and all orders or parts of orders in conflict with any of the provisions of this order are hereby repealed.

"IN BOARD OF SUPERVISORS,
"SAN FRANCISCO, *June 18th*, 1883.

After having been published five successive days, according to law, taken up and passed by the following vote:
87 Ayes—Supervisors Sullivan, Reichenbach, Shirley, Burton, Smith, Pond, Griffin, Strother, Lewis, Bankin, Ashworth.
Absent—Supervisor James.

JNO. A. RUSSELL, *Clerk.*

Approved, San Francisco, June 25th, 1883.
WASHINGTON BARTLETT,
Mayor and ex-officio President Board of Supervisors.

88 *Application to Health Officer for a Certificate.*

To the health officer of the city and county of San Francisco:

SIR: The undersigned respectfully requests that you grant, under order No. 1719, a certificate as to the sanitary condition of premises situated at No. 349 Third street, between Folsom & Harrison st., the same to be opened as a laundry and conducted and operated by—
Signature: YICK WO.

HEALTH OFFICE, SAN FRANCISCO, *June* 11, 1884.

I, J. L. Meares, M. D., health officer of the city and county of San Francisco, do hereby certify that the above-described premises
89 have been inspected by me, and that I find that they are properly and sufficiently drained, and that all proper arrangements for carrying on the business of a laundry, without injury to

the sanitary condition of the neighborhood, have been complied with, and particularly that the provisions of section 4 of order 1666 of the board of supervisors.

Signature: J. L. MEARES, M. D.,
Health Officer.
By J. GANS, *Health Inspector.*

SECTION 4. No person shall construct or maintain or suffer to be or remain upon his or her premises, or premises under his or her control, any privy or privy vault, cesspool, sink, or drain without connecting the same by means of cement, ironstone, or iron pipe with the street sewer in such a manner that it will be effectually drained and purified if there be a sewer in the street on which
90 said premises may be situated with which the same may be connected. Every drain or branch sewer hereafter constructed which shall connect with a dwelling-house or building, or with a privy, privy vault, or cesspool shall be constructed of cement, ironstone, or iron, and be provided with some apparatus or means by which such drain or branch sewer may be effectually flushed and cleansed; and shall also be provided with a trap or apparatus which will effectually prevent the escape of gases from the sewer into such dwelling-house, building, privy, privy vault, or cesspool, which trap or apparatus shall, in all cases, where practicable, be placed under the sidewalks, and be so constructed and placed that it can be readily and conveniently examined and inspected.

Order No. 1719 *as Amended by* 1746.

Regulating the establishment and maintenance of public laundries and public wash-houses, within certain limits, in the
91 city and county of San Francisco.

Whereas the indiscriminate establishment of public laundries and public wash-houses, where clothes and other articles are cleansed for hire, is injurious and dangerous to public health and public safety, and prejudicial to the well being and comfort of the community, and depreciates the value of property in those neighborhoods where such public laundries and such public wash-houses are situate:

Under and in conformity to the authority vested by section 11 of article XI of the constitution of the State of California, and of subdivision 9 of section 74 of an act entitled "An act to repeal the several charters of the city of San Francisco, to establish the boundaries of the city and county of San Francisco, and to consolidate the government thereof," approved April 19, 1856, and the several acts amendatory thereto and supplementory thereof, the people of
92 the city and county of San Francisco do ordain as follows:

SECTION 1 (as amended Nov. 6, 1883, by order No. 1746). On and after the passage of this order it shall be unlawful for any person or persons to establish, maintain, or carry on the business of a public laundry or a public wash-house, where clothes or other articles are cleansed for hire, within that portion of the city and county of San Francisco lying and being within the following boundaries:

Commencing at the intersection of Devisadero street with the waters of the bay of San Francisco; thence following the bay shore easterly and southerly to the easterly end of Channel street; thence along Channel street in a westerly direction to Potrero avenue; thence southerly along Petrero avenue to Army street; then- westerly along Army street to Dolores street; thence northerly along Dolores street to and across Market street to Ridley street; thence westerly along Ridley street to Devisardero street; and thence northerly along Devisadero street to the bay and point of commencement, without having first complied with the conditions hereinafter specified.

93

SEC. 2. It shall be unlawful for any person or persons to conduct or maintain a public laundry or wash-house within the district named in section 1 of this order without having first obtained a certificate, signed by the health officer of the city and county of San Francisco, that the premises are properly and sufficiently drained, and that all proper arrangements for carrying on the business without injury to the sanitary condition of the neighborhood have been complied with, and particularly that the provisions of section 4 of order No. 1666 of this board have been complied with; also a certificate, signed by the board of fire wardens of the city and county of San San Francisco, that the stoves, washing and drying apparatus, and the appliances for heating smoothing-irons are in good condition, and that their use is not dangerous to the surrounding property from fire, and that all proper precautions have been taken to comply with the provisions of order No. 1617, defining "the fire limits of the city and county of San Francisco and making regulations concerning the erection and use of buildings in said city and county," and of order No. 1670, "prohibiting the kindling, maintenance, and use of open fires in houses."

94

SECTION 3. It shall be the duty of the health officer, also the board of fire wardens, respectively, upon application from any person or persons proposing to open or conduct the business of a public laundry within that portion of the city and county designated and described in section 1 of this order to inspect the premises in which it is proposed to carry on said business or in which said business is being carried on, with a view of ascertaining whether the said premises are provided with proper drainage and sanitary appliance-; also whether the provisions of orders Nos. 1617 and 1670 of this board have been complied with, and, if found in all respects satisfactory, then to issue to said applicants the certificates provided for in section 2 of this order.

95

No change whatever shall be made or compensation or fee collected or received for the performance of any of the services required by the provisions of this order in the inspection of premises or the issuance of a certificate, but all such services shall be performed free of charge.

SEC. 4. No person or persons owning or employed in the public laundries or public wash-houses provided for in section 1 of this order shall wash or iron clothes between the hours of 10 o'clock p.

m. and 6 o'clock a. m., nor upon any portion of that day known as Sunday.

96 SEC. 5. No person or persons engaged in the laundry business within that portion of this city described in section 1 of this order shall permit any person suffering from any infectious or contagious disease to lodge, sleep, or remain within or upon the premises used by him, her, or them for the purposes of a public laundry.

SEC. 6. Any person or persons establishing, maintaining, or carrying on the business of a public laundry or a public wash-house, where clothes or other articles are cleansed for hire, within the limits of this city and county, as described in section 1 of this order, without having first complied with the provisions of section 2 of this order, shall be guilty of misdemeanor, and upon conviction thereof shall be punished by a fine of not more than one thousand dollars, or by imprisonment of — more than six months, or by both;

97 and any person who shall violate the provisions of section 4 or 5 of this order shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than five dollars nor more than fifty dollars, or by imprisonment not more than one month, or by both such fine and imprisonment.

SEC. 7. The certificates from the health officer and the board of fire wardens, *are* required by section 2 of this order, shall be exhibited in some conspicuous place on the premises, and the same shall be produced on the demand of any officer of the city and county of San Francisco.

SEC. 8. The police authorities are hereby directed to have the provisions of this order strictly enforced.

SEC. 9. Order No. 1691, and all orders or parts of orders in conflict with any of the provisions of this order are hereby repealed.

98 In Board of Supervisors, San Francisco, June 18th, 1883. After having been published five successive days, according to law, taken up and passed by the following vote:

Ayes—Supervisors Sullivan, Reichenbach, Shirley, Burton, Smith, Pond, Griffin, Strother, Lewis, Rankin, Ashworth.

Absent—Supervisor James.

JNO. A. RUSSELL, *Clerk.*

Approved, San Francisco, June 25, 1883.

WASHINGTON BARTLETT,
Mayor and ex-officio President Board of Supervisors.

Endorsed: Filed Sept. 4, '85. J. W. McCarthy, clerk. J. S. Kilsby, deputy.

99 *Exceptions to Return.*

In the Supreme Court of the State of California.

In Re YICK WO upon *Habeas Corpus.*

The petitioner, Yick Wo, excepts to the sufficiency of the respondent's return upon the ground that the said sections referred to in

said return are invalid, inoperative, unreasonable, discriminative, and repealed, and the said petitioner also refers for facts established to his said petition and the respondent's admissions in writing herein filed.

L. H. VAN SCHAICK,
Att'y for Petitioner.

D. L. SMOOT,
Counsel for Petitioner.

(Indorsed:) Filed Sept. 4, '85. J. W. McCarthy, clerk. J. S. Kilsby, deputy.

100 *Bail Bond.*

STATE OF CALIFORNIA, } ss:
City and County of San Francisco, }

In the Supreme Court of the State of California, City and County of San Francisco.

An order having been made on the 24th day of August, 1885, by Robert F. Morrison, chief justice of the supreme court, that Yick Wo be admitted to bail upon the charge of misdemeanor in the sum of $100 pending proceedings in said court on *habeas corpus*, upon which he has been duly admitted to bail in the sum of one hundred dollars,

we, Yee Teen and Lee Poo, residents of the city and county
101 of San Francisco, hereby undertake that the above-named Yick Wo shall appear and answer the charge above mentioned, in whatever court it may be prosecuted, and shall at all times hold himself amenable to the orders and process of the court, and, if remanded, shall appear for judgment and render himself in execution thereof, or, if he fail to perform either of these conditions, that we will pay to the people of the State of California the sum of one hundred dollars.

YEE TEEN, [L. S.]
Res. or Place of Business, 707 *Clay Street.*
LEE POO, [L. S.]
Res. or Place of Business, 627½ *Jackson St.*

Acknowledged before me and approved by me the 31 day of August, 1885.

JAMES C. PENNIE,
Justice of the Peace and Acting Judge of the Police Judges' Court No. 2 of the City and County of San Francisco.

102 STATE OF CALIFORNIA, } ss:
City and County of San Francisco, }

[Yee Teen], being duly sworn, deposes and says that he is a resident of the city and county of *of* San Francisco, State of California, and a householder in said State of California, and that he is worth the sum of one hundred dollars, exclusive of property exempt from execution and over and above all debts and liabilities.

YEE TEEN.

Subscribed and sworn to before me this 31st day of August, 1885.

[SEAL.] BERT. McNULTY,
Clerk of the Police Judges' Court No. 2 of the City and County of San Francisco.
JAMES C. PENNIE,
Justice of the Peace.

103 STATE OF CALIFORNIA, }
City and County of San Francisco, } ss:

Lee Poo, being duly sworn, deposes and says that he is a resident of the city and county of San Francisco, State of California, and a householder in said State of California, and that he is worth the sum of one hundred dollars, exclusive of property exempt from execution and over and above all debts and liabilities.

LEE POO.

Subscribed and sworn to before me this 31st day of August, 1885.
JAMES C. PENNIE,
Justice of the Peace of the City and County of San Francisco.

(Endorsed:) Filed in the supreme court of the State of California this 31 day of August, 1885. J. W. McCarthy, clerk, by Frank Myers, deputy.

104 *Assignment of Errors.*

In the Supreme Court of the United States.

YICK WO, Plaintiff in Error,
v.
PETER HOPKINS, Sheriff of the City and County of San Francisco, Defendant in Error.

To the honorable the Supreme Court of the United States:

The said Yick Wo complains of and assigns the following errors, viz:

1st. The court should have discharged the petitioner because the ordinance is against natural right, in that it requires the consent of the supervisors to carry on a necessary and harmless occupation without prescribing reasonable or any terms upon which such consent may be obtained, the lawmakers reserving to themselves the right to grant or refuse permission arbitrarily.

105 2nd. The court should have discharged the petitioner because the ordinance is a legislative condemnation to heavy pains and penalties of all persons who wash clothes for hire in frame buildings, whether constituting a nuisance or not, contrary to sub. 3, sec. 9 of art. I of the Constitution of the United States prohibiting bills of attainder.

3rd. The court should have discharged the petitioner because the immediate effect of the ordinance is to deprive the petitioner and others similarly conditioned of their property and property rights without due process of law, or any legal process whatever, contrary

to sec. 1, art. XIV of the amendments to the Constitution of the United States.

4th. The court should have discharged the petitioner because the said ordinance is capable of being so operated and enforced as to discriminate against the petitioner and all other subjects of the Chinese Empire similarly conditioned, contrary to sec. 1 of
106 the 14th amendment, sec. 1977, U. S. Rev. Stats., and articles V and VI of the treaty of 1868, and articles II and III of the treaty of 1881 belween the United States and China.

5th. The court should have discharged the petitioner because the said ordinance is operated and enforced against Chinese subjects only, contrary to the said constitutional, statutory, and treaty guaranties, the board of supervisors refusing all subjects of China permission to wash clothes for hire in frame buildings while granting such permission to all other applicants.

Therefore the judgment should have been for the discharge of the plaintiff in error.

Wherefore plaintiff in error prays that the decision complained of be reversed, and that he have such relief as may be proper in the premises.

L. H. VAN SCHAICK,
Attorney for Plaintiff in Error.

HALL McALLISTER AND
D. L. SMOOT,
Of Counsel.

107 Endorsed: Filed Feb'y 9th, 1885. J. D. Spencer, clerk, by J. S. Williams, deputy.

108 In the Supreme Court of the State of California.

In Re YICK WO on *Habeas Corpus*. No. 20126. In Bank.

EXHIBIT 1 FOR RESPONDENT.

Chinese laundry house of Yick Wo, at No. 349 Third street, San Francisco, as seen from the south.

Endorsed: Filed Sept. 4, '85. J. W. McCarthy, clerk; J. S. Kilsby, deputy.

(Here follows photograph marked p. 109.)

110 In the Supreme Court of the State of California.

In Re YICK WO on *Habeas Corpus*. No. 20126. In Bank.

EXHIBIT 2 FOR RESPONDENT.

Chinese laundry house of Jim Kee, at No. 1233 Howard street, San Francisco, as seen from the north.

Endorsed: Filed Sept. 4, '85. J. W. McCarthy, clerk; J. S. Kilsby, deputy.

(Here follows photograph marked p. 111.)

112 In the Supreme Court of the State of California.

In Re YICK WO on *Habeas Corpus.* No. 20126. In Bank.

EXHIBIT 3 FOR RESPONDENT.

Chinese laundry house of Jim Kee, at No. 1233 Howard street, San Francisco, as seen from the west.

Endorsed: Filed Sept. 4, '85. J. W. McCarthy, clerk; J. S. Kilsby, deputy.

(Here follows photograph marked p. 113.)

114 In the Supreme Court of the State of California.

In Re YICK WO on *Habeas Corpus.* No. 20126. In Bank.

EXHIBIT 4 FOR RESPONDENT.

Chinese laundry house of We Wo, at No. 505 Minna street, San Francisco, as seen from the west.

Endorsed: Filed Sept. 4, '85. J. W. McCarthy, clerk; J. S. Kilsby, deputy.

(Here follows photograph marked p. 115.)

116 In the Supreme Court of the State of California.

In Re YICK WO on *Habeas Corpus.* No. 20126. In Bank.

EXHIBIT 5 FOR RESPONDENT.

Chinese laundry house of Sang Lee, at No. 924 Howard street, San Francisco, as seen from the north.

Endorsed: Filed Sept. 4, '85. J. W. McCarthy, clerk; J. S. Kilsby, dep.

(Here follows photograph marked p. 117.)

118 In the Supreme Court of the State of California.

In Re YICK WO on *Habeas Corpus.* No. 20126. In Bank.

EXHIBIT 6 FOR RESPONDENT.

Chinese laundry house of Sang Lee, at No. 924 Howard street, San Francisco, as seen from the east.

Endorsed: Filed Sept. 4, '85. J. W. McCarthy, clerk. J. S. Kilsby, deputy.

(Here follows photograph marked p. 119.)

120 In the Supreme Court of the State of California.

In Re YICK WO on *Habeas Corpus*. No. 20126. In Bank.

EXHIBIT 7 FOR RESPONDENT.

Chinese laundry house of We Wo, at No. 505 Minna street, San Francisco, as seen from the north.

Endorsed: Filed Sept. 4, 1885. J. W. McCarthy, clerk; by Frank Myers, deputy.

(Here follows photograph marked p. 121.)

122 *Clerk's Certificate.*

In the Supreme Court of the State of California.

YICK WO, Plaintiff in Error,

v.

PETER HOPKINS, Sheriff of the City and County of San Francisco, Defendant in Error.

I, J. D. Spencer, clerk of the supreme court of the State of California, do hereby certify the foregoing one hundred and twenty-one pages, numbered from one to one hundred and twenty-one, both numbers inclusive, contain a full, true, and correct transcript of the proceedings in the cause above entitled, and that the same together constitute the return to the annexed writ of error.

Witness my hand and the seal of the said supreme court this 15th day of February, A. D. 1886.

[Seal Supreme Court of California.]

J. D. SPENCER, *Clerk*,
Per J. S. WILLIAMS, *Deputy*.

Endorsed on cover: California supreme court. No. 1280. Yick Wo, plaintiff in error, *vs.* Peter Hopkins, sheriff of the city and county of San Francisco. Filed March 5, 1886.